

RECEIVED

OCT 4 1990

BAW LIBRARY

The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

PROPOSED RULES

Administration

Economic and Community Development

Environment, Health, and Natural Resources

Medical Examiners, Board of

Real Estate Commission

FINAL RULES

Correction

Human Resources

Revenue

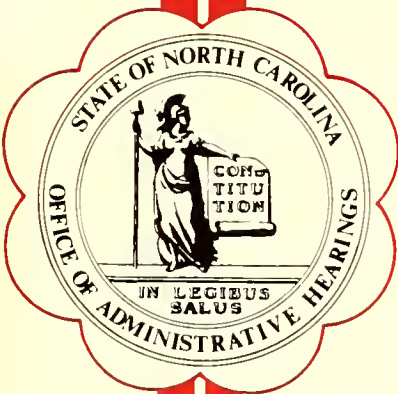
Transportation

ARRC OBJECTIONS

RULES INVALIDATED BY JUDICIAL DECISION

ISSUE DATE: OCTOBER 1, 1990

Volume 5 • Issue 13 • Pages 860-895



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

North Carolina Register. Published bi-monthly by the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions one hundred and five dollars (\$105.00) per year.

North Carolina Administrative Code. Published in looseleaf notebooks with supplement service by the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions seven hundred and fifty dollars (\$750.00). Individual volumes available.

NORTH CAROLINA REGISTER



*Office of Administrative Hearings
P. O. Drawer 11666
Raleigh, NC 27604
(919) 733 - 2678*

Julian Mann III,
Director
James R. Scarcella Sr.,
Deputy Director
Molly Masich,
Director APA Services

Staff:
Ruby Creech,
Publications Coordinator
Teresa Kilpatrick,
Editorial Assistant
Jean Shirley,
Editorial Assistant

ISSUE CONTENTS

I. PROPOSED RULES

Administration	
Auxiliary Services	860
Economic and Community Development	
Credit Union Division	860
Environment, Health, and Natural Resources	
Health Services	860
Licensing Boards	
Medical Examiners, Board of	862
Real Estate Commission	863

II. FINAL RULES

Correction	
Division of Prisons	867
Human Resources	
N.C. Drug Commission	870
Revenue	
Sales and Use Tax	872
Transportation	
Division of Highways	883

III. ARRC OBJECTIONS.....888

IV. RULES INVALIDATED BY JUDICIAL DECISION.....891

V. CUMULATIVE INDEX.....893

NORTH CAROLINA REGISTER

Publication Schedule

(April 1990 - December 1991)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
04/02/90	03/12/90	03/19/90	05/02/90	08/01/90
04/16/90	03/23/90	03/30/90	05/16/90	08/01/90
05/01/90	04/09/90	04/17/90	05/31/90	09/01/90
05/15/90	04/24/90	05/01/90	06/14/90	09/01/90
06/01/90	05/10/90	05/17/90	07/01/90	10/01/90
06/15/90	05/24/90	06/01/90	07/15/90	10/01/90
07/02/90	06/11/90	06/18/90	08/01/90	11/01/90
07/16/90	06/22/90	06/29/90	08/15/90	11/01/90
08/01/90	07/11/90	07/18/90	08/31/90	12/01/90
08/15/90	07/25/90	08/01/90	09/14/90	12/01/90
09/04/90	08/13/90	08/20/90	10/04/90	01/01/91
09/14/90	08/24/90	08/31/90	10/14/90	01/01/91
10/01/90	09/10/90	09/17/90	10/31/90	02/01/91
10/15/90	09/25/90	10/02/90	11/14/90	02/01/91
11/01/90	10/11/90	10/18/90	11/30/90	03/01/91
11/15/90	10/24/90	10/31/90	12/14/90	03/01/91
12/03/90	11/08/90	11/15/90	01/02/91	04/01/91
12/14/90	11/21/90	11/30/90	01/13/91	04/01/91
01/02/91	12/07/90	12/14/90	02/01/91	05/01/91
01/15/91	12/20/90	12/31/90	02/14/91	05/01/91
02/01/91	01/10/91	01/17/91	03/03/91	06/01/91
02/15/91	01/25/91	02/01/91	03/17/91	06/01/91
03/01/91	02/08/91	02/15/91	03/31/91	07/01/91
03/15/91	02/22/91	03/01/91	04/14/91	07/01/91
04/01/91	03/11/91	03/18/91	05/01/91	08/01/91
04/15/91	03/22/91	04/01/91	05/15/91	08/01/91
05/01/91	04/10/91	04/17/91	05/31/91	09/01/91
05/15/91	04/24/91	05/01/91	06/14/91	09/01/91
06/03/91	05/10/91	05/17/91	07/03/91	10/01/91
06/14/91	05/23/91	05/31/91	07/14/91	10/01/91
07/01/91	06/10/91	06/17/91	07/31/91	11/01/91
07/15/91	06/21/91	06/28/91	08/14/91	11/01/91
08/01/91	07/11/91	07/18/91	08/31/91	12/01/91
08/15/91	07/25/91	08/01/91	09/14/91	12/01/91
09/03/91	08/12/91	08/19/91	10/03/91	01/01/92
09/16/91	08/23/91	08/30/91	10/16/91	01/01/92
10/01/91	09/10/91	09/17/91	10/31/91	02/01/92
10/15/91	09/24/91	10/01/91	11/14/91	02/01/92
11/01/91	10/11/91	10/18/91	12/01/91	03/01/92
11/15/91	10/24/91	10/31/91	12/15/91	03/01/92
12/02/91	11/07/91	11/14/91	01/01/92	04/01/92
12/16/91	11/21/91	12/02/91	01/15/92	04/01/92

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

**TITLE 1 - DEPARTMENT OF
ADMINISTRATION**

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to amend rules cited as 1 NCAC 4G .0217.

The proposed effective date of this action is February 1, 1991.

The public hearing will be conducted at 3:00 p.m. on October 31, 1990 at the Department of Administration, Policy and Planning Conference Room 5062C, 116 West Jones Street, Raleigh, NC 27603-8003.

Comment Procedures: Any interested person may present his/her comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling David McCoy, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003, (919) 733-7232.

CHAPTER 4 - AUXILIARY SERVICES

SUBCHAPTER 4G - SURPLUS PROPERTY

SECTION .0200 - STATE SURPLUS PROPERTY

.0217 FAILURE TO PAY

If the purchaser fails to pay in full for the property within ~~40 working~~ 15 calendar days from the date of award, the property purchased will be promptly resold in such manner as the state may elect, and the defaulting purchaser charged with loss to the state, if any, together with all expense of the sale. If the purchaser does not remove the property purchased within ~~30~~ 15 calendar days ~~after~~ from the date of award, the General Services Division reserves the right to retain the purchase price and resell the property a second time and retain all proceeds therefrom.

Statutory Authority G.S. 143-49.

**TITLE 4 - DEPARTMENT OF ECONOMIC
AND COMMUNITY DEVELOPMENT**

Notice is hereby given in accordance with G.S. 150B-12 that the ECD, Credit Union Division intends to adopt rule(s) cited as 4 NCAC 6C .0408.

The proposed effective date of this action is February 1, 1991.

The public hearing will be conducted at 10:00 a.m. on October 15, 1990 at Room 4009, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27603.

Comment Procedures: Any interested person may present his/her comments either in writing three days prior to or at the hearing or orally at the hearing for a maximum of ten minutes. Any person may request information by writing or calling Mr. Stanley W. Brown Jr., Credit Union Division, 430 North Salisbury Street, Raleigh, North Carolina (919) 733-7501.

CHAPTER 6 - CREDIT UNION

SUBCHAPTER 6C - CREDIT UNIONS

SECTION .0400 - LOANS

.0408 SALE OF LOANS

(a) A credit union may sell, in whole or in part, to any source, its loans provided the Board of Directors or designated committee approves the sale and a written agreement and a schedule of loans covered by the agreement are retained in the credit union office.

(b) A credit union may not sell loans with recourse without the permission of the Administrator of Credit Unions.

(c) A credit union may agree to service any obligation it purchases or sells in whole or in part.

Statutory Authority G.S. 54-109.12; 54-109.21(9); 54-109.21(25); 54-109.22.

**TITLE 15A - DEPARTMENT OF
ENVIRONMENT, HEALTH, AND
NATURAL RESOURCES**

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Health Services and the Department of Environment, Health, and Natural Resources intends to amend rule(s) cited as 15A NCAC 20A .0006; 15A NCAC 24A .0202, .0303.

The proposed effective date of this action is February 1, 1991.

The public hearing will be conducted at 9:00 a.m. on November 1, 1990 at the Ground Floor

Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Any person may request copies of the proposed rules by contacting John P. Barkley, DEHNR, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-7247. Written comments on these Rules may be sent to Mr. Barkley at the above address or submitted at the public hearing. If you desire to speak at the public hearing, notify Mr. Barkley at least 3 days prior to the public hearing. At the discretion of the Chairman, the public may also be allowed to comment on the rules at the Commission Meeting. Fiscal notes on applicable rules are available from Mr. Barkley.

CHAPTER 20 - LABORATORY SERVICES

SUBCHAPTER 20A - GENERAL POLICIES

.0006 FEES

(d) Fees for the analysis of public water supplies shall be as follows:

PARAMETER	FEE
Inorganic Chemistry	\$200.00
Organic Chemistry	\$190.00
Coliform	\$ 45.00 <u>\$ 20.00</u>
Trihalomethanes	\$ 60.00
Sodium and Corrosivity	\$ 60.00
Radiochemistry:	
gross alpha and beta	\$ 50.00
radium 226	\$ 65.00
radium 228	\$ 50.00
uranium	\$ 75.00
Any single organic or inorganic parameter	\$ 15.00

Statutory Authority G.S. 130A-5(12); 130A-326.

CHAPTER 24 - GENERAL PROCEDURES FOR PUBLIC HEALTH PROGRAMS

SUBCHAPTER 24A - PAYMENT PROGRAMS

SECTION .0200 - ELIGIBILITY DETERMINATIONS

.0202 DETERMINATION OF FINANCIAL ELIGIBILITY

(b) The financial eligibility requirements of this Subchapter shall not apply to:

- (1) the migrant health program;
- (2) the supplemental security income disabled children's program;
- (3) Children's Special Health Services when the requirements of 10 NCAC 8D .0800 are met;

- (4) school health program financial eligibility determinations performed by a local health department which has ~~filed a written statement with the Division of Health Services which provides for use of~~ chosen to use the financial eligibility standards of the Department of Public Instruction's free lunch program;
- (5) prenatal outpatient services sponsored through local health department delivery funds, 10 NCAC 8G .0600; or through perinatal program high risk maternity clinic reimbursement funds, 10 NCAC 8G .0700.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.

SECTION .0300 - ELIGIBILITY PROCEDURES

.0303 PAYMENT LIMITATIONS

(b) During the last ~~four~~ six months of the fiscal year, the State Health Director may limit payment program benefits that can be authorized when the total amount of outstanding authorizations, plus the estimated authorizations for the remainder of the fiscal year, less estimated cancellations, exceeds ~~90~~ 100 percent of the program's cash balance. The State Health Director shall rescind the limitations at the end of the fiscal year, or prior to the end of the fiscal year if sufficient funds become available to authorize full program benefits for the remainder of the fiscal year.

(e) Notwithstanding Paragraph (d) of this Rule, when the provider, the patient or a person responsible for the patient receives other third party payments equal to or exceeding the Department's payment rate, the Department may pay the difference between the other payments and the provider's charge for a child adopted pursuant to 15A NCAC 21F .0801, as long as the Department's payment does not exceed its usual payment rate.

(f) ~~(e)~~ If after the Department makes payment for particular services or appliances, the provider, the patient, or a person responsible for the patient receives partial or total payment for the services or appliances from a third party payor, or receives funds in settlement of a civil claim which are available to pay for the services or appliances, the person receiving the payment shall reimburse the Department to the extent of the amount received by the person without exceeding the amount of the Department's prior payment to the provider. This reimbursement shall be made to the Department within 45 days after receipt of the third party payment.

(g) Notwithstanding Paragraph (f) of this Rule, if after the Department makes payment for particular services or appliances for a child adopted pursuant to 15A NCAC 21F .0801, the provider receives partial or total payment from a third party payor, the provider shall only be required to reimburse the Department the amount by which the total of payments exceeds the provider's charge.

(h) ~~(f)~~ If the Department requests a refund of a payment made to a provider, the refund shall be made to the Department within 45 days after the date of the refund request.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the Board of Medical Examiners of the State of North Carolina intends to amend rule cited as 21 NCAC 32B .0101 and adopt rules cited as 21 NCAC 32B .0315 - .0317.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at 4:00 p.m. on October 31, 1990 at the N.C. Board of Medical Examiners, 1313 Navaho Drive, Raleigh, N.C. 27609.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing as indicated above. Written statements not presented at the hearing should be directed before October 15, 1990 to the following address: Administrative Procedures, N.C. Board of Medical Examiners, P.O. Box 26808, Raleigh, NC 27611-6808.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

SUBCHAPTER 32B - LICENSE TO PRACTICE MEDICINE

SECTION .0100 - GENERAL

.0101 DEFINITIONS

The following definitions apply to Rules within this Subchapter:

- (1) ACGME - Accreditation Council for Graduate Medical Education.
- (2) AOA - American Osteopathic Association.

- (3) Board - Board of Medical Examiners of the State of North Carolina.
- (4) ECFMG - Educational Commission for Foreign Medical Graduates.
- (5) Fifth Pathway - an avenue for licensure as defined in the Directory of Accredited Residencies 1977-1978, American Medical Association, pp. 30-32. The Directory is adopted by reference under G.S. 150B-14(b).
- (6) FLEX - Federation Licensing Examination.
- (7) LCME - Liaison Commission on Medical Education.
- (8) SPEX - Special Purpose Examination.

Statutory Authority G.S. 90-6.

SECTION .0300 - LICENSE BY ENDORSEMENT

.0315 QUALIFICATION

To be eligible for license by endorsement of credentials, an applicant who has not met one of the following qualifications within the past ten years of the date of the application to the Board, must take the SPEX and attain a score of at least 75:

- (1) National Board of Medical Examiners certification;
- (2) FLEX scores as required under Rule .0314 of this Section;
- (3) SPEX score of at least 75;
- (4) certification or re-certification from a specialty board recognized by the American Board of Medical Specialties; or
- (5) completed formal postgraduate medical education as required under Rule .0313 of this Section.

This requirement is in addition to all other requirements for licensure.

Statutory Authority G.S. 90-11; 90-13.

.0316 SPEX FEE

(a) The fee for taking SPEX will be the Board's cost of the test materials and is due at the time of application.

(b) In the event the applicant fails to make a passing score, the fee will not be refunded.

(c) In the event the applicant does not appear for the regularly scheduled examination or the application is withdrawn, no portion of the fee will be refunded.

Statutory Authority G.S. 90-15.

.0317 SPEX DEADLINE

All application materials must be in the Board's office at least seven weeks prior to the SPEX examination.

Statutory Authority G.S. 90-6.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Real Estate Commission intends to amend rules cited as 21 NCAC 58A .0301, .0503, .0505; 58C .0302, .0308; 58D .0302, .0402, .0406, .0408, .0409.

The proposed effective date of this action is February 1, 1991.

The public hearing will be conducted at 1:00 p.m. on November 7, 1990 at the Office of the North Carolina Real Estate Commission, 1313 Navaho Drive, Raleigh, North Carolina 27609.

Comment Procedures: Comments regarding the rules may be made orally or submitted in writing at the public hearing. Written comments not submitted at the hearing may be delivered to the North Carolina Real Estate Commission, Post Office Box 17100, Raleigh, North Carolina 27619, so as to be received by the hearing date.

CHAPTER 58 - REAL ESTATE COMMISSION

SUBCHAPTER 58A - REAL ESTATE BROKERS AND SALESMEN

SECTION .0300 - APPLICATION FOR LICENSE

.0301 FORM

Persons who wish to file applications for a broker or salesman license can obtain the required form upon request to the commission. In general, the form calls for information such as the applicant's name and address, the applicant's social security number, a recent passport size photograph of the applicant, places of residence, education, prior real estate licenses, and such other information necessary to identify the applicant and determine his qualifications and fitness for licensure.

Statutory Authority G.S. 93A-3(c); 93A-4(a),(b),(d); 150B-11.

SECTION .0500 - LICENSING

.0503 LICENSE RENEWAL: PENALTY FOR NON-RENEWAL

(a) Any licensee desiring the renewal of a license shall, during the month of June, apply for same in writing upon a form approved by the

Commission and shall forward the required fee of ~~twenty dollars (\$20.00)~~ twenty-five dollars (\$25.00). Forms are available upon request to the Commission.

(b) Any person or corporation which engages in the business of broker or salesman while his or its license is lapsed will be subject to the penalties prescribed in the license law.

Statutory Authority G.S. 93A-4(c),(d); 93A-6.

.0505 EXPIRED LICENSE

Expired licenses may be reinstated within 12 months after expiration upon proper application and payment of the ~~twenty dollar (\$20.00)~~ twenty-five dollar (\$25.00) renewal fee plus five dollar (\$5.00) late filing fee. Licenses expired for more than 12 months may be considered for reinstatement upon proper application and payment of thirty dollar (\$30.00) fee for brokers and thirty dollar (\$30.00) fee for salesmen. Such applications will be reviewed by the commission to determine whether an examination and/or real estate education will be required.

Statutory Authority G.S. 93A-4(c),(d).

SUBCHAPTER 58C - REAL ESTATE AND APPRAISAL EDUCATION

SECTION .0300 - PRE-LICENSING AND PRE-CERTIFICATION COURSES

.0302 PROGRAM STRUCTURING

(a) Real estate pre-licensing education programs must be structured as prescribed in G.S. 93A-4(a). Completion of the salesman course within the previous five years or possession of a current salesman license must be a prerequisite for enrollment in the advanced broker courses.

(b) Except as provided in Paragraph (d) of this Rule, residential appraiser pre-licensing/pre-certification education programs must consist of the following three courses, each involving a minimum of 30 classroom hours:

- (1) Introduction to Real Estate Appraisal;
- (2) Valuation Principles and Procedures; and
- (3) Applied Residential Property Valuation.

These courses must be completed sequentially in the order listed.

(c) Except as provided in Paragraph (d) of this Rule, general appraiser pre-certification education programs must consist of the following three courses, each involving a minimum of 30 classroom hours, in addition to the three residential appraiser courses prescribed in Paragraph (b) of this Rule:

- (1) Introduction to Income Property Appraisal;

(2) Advanced Income Capitalization Procedures; and

(3) Applied Income Property Valuation.

These courses must be completed sequentially in the order listed and completion of the residential appraiser courses within the previous five years or possession of a current appraiser license must be a prerequisite for enrollment in the general appraiser courses.

(d) If college credit is to be granted for an appraisal pre-licensing or pre-certification education program to be offered by a college, university or community college, the school may request approval to structure such program in a manner different from that prescribed in Paragraphs (b) and (c) of this Rule. To be approved by the Commission, the proposed program structure must satisfy the minimum classroom hour requirements for such programs, must provide for appropriate course titles, and must provide for subject area coverage and enrollment prerequisites that are comparable to the requirements for programs that are structured as described in Paragraphs (b) and (c) of this Rule.

(e) An exception to the course prerequisite requirements stated in Paragraphs (b) and (c) of this Rule or established under Paragraph (d) of this Rule shall be permitted only when the person desiring the exception has obtained from the Commission an exemption from the prerequisite course(s) which the person would normally be required to have completed. A course exemption will be granted only upon a finding by the Commission that the person possesses appraisal education ~~or experience~~ equivalent to the course(s) for which the exemption is requested. A request for course exemption must be made on a form prescribed by the Commission. ~~and persons filing such requests should allow 45 days for consideration of the request.~~ If a request for course exemption is granted, the person granted the exemption may present the notice of course exemption issued by the Commission to any approved or licensed school in order to obtain the desired exception to the normal prerequisite requirements.

Statutory Authority G.S. 93A-4(a),(d); 93A-33; 93A-75(a).

.0308 APPRAISAL INSTRUCTORS

(a) Except as indicated in Paragraph (b) of this Rule, all appraisal pre-licensing and pre-certification courses must be taught by instructors who possess good moral character and either the minimum appraisal education and experience qualifications listed in this Rule or other qualifications that are found by the Commission to

be equivalent to those listed. These qualification requirements must be met on a continuing basis. For a previously-approved instructor, experience in teaching appraisal courses may be substituted for any required appraisal experience when a school is seeking continued approval of the instructor. The minimum qualifications are as follows:

(1) Residential appraiser courses: 90 classroom hours of real estate appraisal education equivalent to the residential appraiser education program prescribed in Rule .0302(b) of this Section and either two years' full-time experience as a residential real estate appraiser within the previous five years or three years' full-time experience as a general real estate appraiser within the previous five years, with at least one-half of such experience being in residential property appraising. After July 1, 1991, instructors must also be ~~state licensed~~ either state-certified residential or state-certified general real estate appraisers.

(2) General appraiser courses: 180 classroom hours of real estate appraisal education equivalent to the general appraiser education program prescribed in Rule .0302(c) of this Section and three years' full-time experience as a general real estate appraiser within the previous five years, with at least one-third of such experience being in income property appraising. After July 1, 1991, instructors must also be state-certified general real estate appraisers.

(b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-third of any course, provided that each guest lecturer possesses experience directly related to the particular subject area he is teaching.

Statutory Authority G.S. 93A-33; 93A-75(a).

SUBCHAPTER 58D - REAL ESTATE APPRAISERS

SECTION .0300 - APPRAISER EXAMINATIONS

.0302 SUBJECT MATTER AND PASSING SCORES

(a) The examination for licensure as a state-licensed residential real estate appraiser and for certification as a state-certified residential real estate appraiser shall test applicants on the following general subject areas:

- (1) basic real property law;
- (2) concepts of value;
- (3) forces affecting real estate values;

- (4) residential real estate financing;
- (5) residential construction and design;
- (6) the appraisal process;
- (7) valuation principles and procedures;
- (8) application of valuation principles and procedures to the valuation of various types of residential properties and to related appraisal assignments;
- (9) standards of appraisal practice;
- (10) the North Carolina Real Estate Appraisers Act and related commission rules; and
- (11) related subject areas.

(b) In addition to the subject areas listed in (a) of this Rule, the examination for certification as a state-certified general real estate appraiser shall test applicants on the following general subject areas:

- (1) income capitalization principles and procedures;
- (2) application of valuation principles and procedures to the valuation of all types of income-producing and other properties and to related appraisal assignments; and
- (3) related subject areas.

(c) In order to pass the examination for licensure as a state-licensed residential real estate appraiser or for certification as a state-certified residential real estate appraiser or state-certified general real estate appraiser, an applicant must attain a score equal to at least 75 percent of the total point value for the questions on the examination. Passing applicants will receive only a score of "pass"; however, failing applicants will be informed of their actual score.

Statutory Authority G.S. 93A-73(c); 93A-77.

SECTION .0400 - GENERAL APPRAISAL PRACTICE

.0402 DISPLAY OF LICENSES AND CERTIFICATES

(a) The real estate appraiser license or certificate of a state-licensed or state-certified real estate appraiser shall be prominently displayed at the appraiser's place of business, provided that the license or certificate of a managing appraiser and the license or certificate of each licensee or certificate holder engaged in real estate appraisal activities at the office of the managing appraiser shall be prominently displayed at such office.

(b) The annual license or certificate renewal pocket card issued by the Commission to each state-licensed or state-certified real estate appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification.

Statutory Authority G.S. 93A-77.

.0406 APPRAISAL REPORTS

(a) Each written appraisal report prepared by or under the direction of a state-licensed or state-certified real estate appraiser shall bear the signature of the state-licensed or state-certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation "state-licensed residential real estate appraiser", "state-certified residential real estate appraiser", or the designation "state-certified general real estate appraiser", or "state-certified residential general real estate appraiser", as applicable. Each such appraisal report shall also indicate whether or not the state-licensed or state-certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

(b) Every state-licensed and state-certified real estate appraiser shall affix or stamp to all appraisal reports a seal of a design authorized by the Commission which shall set forth the name and license or certificate number of the appraiser in whose name the appraisal report is issued and shall identify the appraiser as a "state-licensed residential real estate appraiser", a "state-certified residential real estate appraiser", or as a "state-certified general real estate appraiser" or "state-certified residential/general real estate appraiser", as applicable.

(c) A state-licensed or state-certified real estate appraiser who signs an appraisal report prepared by another person, including a subcontractor, acting under the direction or supervision of the appraiser shall be fully responsible for the content of the report.

(d) Notwithstanding the provisions of Rule .0405 of this Section regarding the issuance of oral appraisal reports, a written appraisal report shall be issued on all real estate appraisals performed in connection with federally related transactions.

Statutory Authority G.S. 93A-77.

.0408 SUPERVISION OF UNLICENSED AND UNCERTIFIED ASSISTANTS

A state-licensed or state-certified real estate appraiser may employ a person or persons not licensed or certified as a real estate appraiser to assist in the performance of real estate appraisals, provided that the state-licensed or state-certified real estate appraiser:

- (1) actively and personally supervises the unlicensed and uncertified assistant;
- (2) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of an unlicensed and uncertified assistant is utilized;
- (3) ~~signs all appraisal reports for appraisals in which the services of an unlicensed and uncertified assistant was utilized; complies with all provisions of Rule .0406 of this Section regarding appraisal reports; and~~
- (4) ~~indicates on the appraisal report whether or not he has personally inspected the property; and~~
- (5) (4) prepares and furnishes to the managing appraiser, if applicable, and to each unlicensed and uncertified assistant whose services were utilized in connection with the appraisal, a report on a form prescribed by the Commission describing the nature and extent of assistance rendered by the unlicensed and uncertified assistant in connection with the appraisal, and places a copy of such report in the supporting file for the appraisal.

Statutory Authority G.S. 93A-71(f); 93A-77.

.0409 SUPERVISION OF LICENSED AND CERTIFIED RESIDENTIAL APPRAISERS

(a) When a state-licensed residential real estate appraiser assists a state-certified residential or general real estate appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state-certified

real estate appraiser, the state-certified real estate appraiser shall:

- (1) actively and personally supervise the state-licensed real estate appraiser;
- (2) review the appraisal report and supporting data used in connection with the appraisal;
- (3) ~~indicate on the appraisal report whether or not he has personally inspected the property; and comply with all provisions of Rule .0406 of this Section regarding appraisal reports; and~~
- (4) prepare and furnish to the managing appraiser, if applicable, and to each state-licensed real estate appraiser whose services were utilized in connection with the appraisal, a report on a form prescribed by the Commission describing the nature and extent of assistance rendered by the state-licensed real estate appraiser in connection with the appraisal, and place a copy of such report in the supporting file for the appraisal.
- (b) When a state-certified residential real estate appraiser assists a state-certified general real estate appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state-certified general real estate appraiser, the state-certified general real estate appraiser shall perform those supervisory acts set forth in Paragraph (a) of this Rule with regard to the activities of the state-certified residential real estate appraiser.

Statutory Authority G.S. 93A-77.

The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.

Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Please contact this office if you have any questions.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Upon request from the adopting agency, the text of rules will be published in this section.

*Punctuation, typographical and technical changes to rules are incorporated into the List of Rules Codified and are noted as * Correction. These changes do not change the effective date of the rule.*

TITLE 5 - DEPARTMENT OF CORRECTION

CHAPTER 2 - DIVISION OF PRISONS

SUBCHAPTER 2E - TREATMENT

SECTION .1500 - SAFETY AND HEALTH

.1501 PURPOSE

(a) The North Carolina Department of Correction subscribes to the Executive Order establishing the State Employee's Work Place Requirements Program for Safety and Health. The Division of Prisons through the exercise of its authority shall assure insofar as possible through a Comprehensive Correctional Safety and Health Program that every employee in the Division of Prisons will have safe and healthful working conditions and meet the standards provided in Executive Order No. 6 (1985); and G.S. 93-129.1; 95-130.1; and 95-148.

(b) The rights and duties of employers and employees as described in these standards shall henceforth become a part of the rules and regulations of the Division of Prisons.

(c) The Division of Prisons will make a vigorous and diligent effort to achieve full compliance with these standards and will commit such resources as required to fully perform the responsibilities assigned to state agencies as described in the Order. To meet this goal, the Division will create and maintain a Safety Policy Manual, which will be issued and maintained under separate cover. Adherence to the policies contained therein shall be required by all facilities subject to the Department's rules and regulations, unless otherwise waived in writing by the Director of Prisons, or his designee.

(d) Employees are hereby guaranteed the exercise of their rights under the Safety and Health Standards without being subjected to retaliation. These rights include the right to register complaints about unsafe working conditions; the right to be fully informed about disposition of complaints; and the right to be fully advised about violations of safety standards. These rights also include the right to participate in the safety program and to be represented at safety inspections.

*History Note: Authority G.S. 95-129.1; 95-130.1; 95-148; 148-11;
Executive Order Number 6;
Eff. October 1, 1989;
Amended Eff. October 1, 1990.*

SUBCHAPTER 2F - CUSTODY AND SECURITY

SECTION .1800 - CONTROL OF FIREARMS

.1801 GENERAL

It shall be the Policy of the Division of Prisons to have sufficient numbers and types of standardized firearms maintained in authorized armories which contribute to institutional security and promote public safety through the assignment and appropriate utilization of firearms by trained correctional staff.

*History Note: Statutory Authority G.S. 148-5; 148-11;
Eff. November 1, 1976;
Amended Eff. October 1, 1990.*

.1802 RESPONSIBILITIES

(a) The Director of Prisons will establish a list of Standardized Firearms and Authorized Facility Firearms Inventory based upon a published formula.

(b) Each facility superintendent is required to designate space for an armory in order to safely and securely store firearms, ammunition, and other security equipment. The armory must be:

- (1) secure from inmate access and/or take-over;
- (2) convenient for timely issuance of weapons;
- (3) equipped with proper storage racks, locking metal cabinets and other storage space as appropriate;
- (4) accessible from an entrance outside the facility's secure perimeter.

(c) An armory supervisor shall be designated by each facility superintendent. The designated individual shall have working knowledge of all equipment stored in the armory and shall be trained in its use. The armory supervisor shall also perform the following duties:

- (1) monthly armory inspections,
- (2) log audits,
- (3) inventory audits,
- (4) supervise armory officer.

(d) The armory officer shall maintain all equipment in a safe and secure manner. This individual will provide maintenance and cleaning of equipment on an approved schedule. The armory supervisor will file an annual report with the respective command manager. This report will be filed by July 1 each year and should include all equipment at each facility and its location within the facility at the time of the report.

*History Note: Statutory Authority G.S. 148-5; 148-11;
Eff. November 1, 1976;
Amended Eff. October 1, 1990.*

.1803 APPROVED STANDARD ITEMS

(a) Only those firearms approved by the Director of Prisons will be used in the execution of Division of Prisons' duties and responsibilities.

(b) Approved Firearms:

- (1) Revolver, Smith & Wesson, Model 65, .357 Magnum 4" heavy barrel, stainless steel.
- (2) Smith & Wesson, Model 10, .38 Caliber. This weapon will continue in service until it can be replaced by the above referenced Smith and Wesson Model 65, .357 Magnum. Additional .38 caliber weapons will not be purchased.
- (3) Shotgun, Remington, Model 870, 12-gauge pump.
- (4) Rifle, Ruger Mini 14, semi-automatic .223 caliber, with twenty-shot magazine.

(c) Approved Ammunition:

- (1) All new ammunition for all calibers of weapons will be ordered annually. The old ammunition will be used to range check weapons and for training and will be marked "range use only." All ammunition and other combustible materials must be stored in secure metal cabinets.
- (2) All issued ammunition will be replaced every three months and used for range training or field testing of weapons and will be marked "range use only."
- (3) Standardized Rounds:
 - (A) Model 65 revolver: .357 Magnum, 125 grain jacketed hollow point.
 - (B) Model 10 revolver: .38 Caliber, 110 grain jacketed hollow point.
 - (C) 12 gauge shotgun: Tower and ground use will be 2-3/4" #1 buckshot, average 20 pellet load.
 - (D) Rifle: .223 Caliber, 55 grain pointed soft nose.

History Note: Statutory Authority G.S. 148-5; 148-11;

Eff. October 1, 1990.

.1804 WEAPONS MAINTENANCE SCHEDULE

- (a) All weapons used on the firing range will be cleaned after daily use.
- (b) All weapons (except tower weapons) issued but unused will be cleaned at least weekly.
- (c) Any weapon exposed to inclement weather will be cleaned upon return to the point of issue.
- (d) All weapons stored in the armory unused and unissued will be cleaned at least once every quarter.
- (e) All weapons will be fired and cleaned every six months.
- (f) Reports regarding firing and cleaning problems with weapons will be dated and submitted on the annual Arms, Ammunition, and Armory Control Report.
- (g) All weapons found to be inoperative will be repaired by a trained gunsmith as soon as possible.
- (h) All weapons stored at an issue point, other than the armory, or used for regular issue, i.e., transporting, hospital duty, perimeter patrol or tower duty, will be rotated back to the armory at least once per quarter.
- (i) All weapons and equipment issued for tower duty shall be:
 - (1) visually checked each shift by the officer assigned to that tower;
 - (2) checked at least once weekly by the armory supervisor or a supervisor designated that duty.

*History Note: Statutory Authority G.S. 148-5; 148-11;
Eff. October 1, 1990.*

.1805 WEAPONS INVENTORY, CONTROL, AND ISSUE

- (a) Fiscal Administration Policy 1C .1700 delineates a uniform system inventory control, firearm disposal, and individual accountability of firearms.
 - (1) A physical inventory of all weapons will be made monthly.
 - (2) Equipment Control Listing will be maintained in the armory and the superintendent's office.
- (b) All weapons will be assigned to the armory inventory.
 - (1) All weapons will be issued out of the armory either directly to a person or to a secure issue point where the weapons can be reissued.
 - (2) Weapons issued to an issue point, a tower, or for temporary issue will be recorded on the Temporary Equipment Issue Log.
 - (3) Weapons re-issued from an issue point will be recorded in a log book maintained for that purpose. That log will include the following information: date of issue, serial number, type of equipment, issued to, reason for the issue and date returned.
- (c) Weapons assigned to employees on a permanent basis will be strictly controlled.
 - (1) A memorandum of receipt will be accomplished and signed by every employee who is assigned a firearm on a permanent basis. The issue will be documented on the Permanent Equipment Issue Log maintained at the armory.
 - (2) Firearms may be permanently assigned to area administrators, district managers, PERT company commanders, PERT assistant company commander, PERT platoon leaders, PERT assistant platoon leaders, fugitive lieutenants and bloodhound handlers upon the approval of the command manager. All other permanently assigned weapons must be approved by the deputy director.
 - (3) The assigned employee is responsible for the maintenance, safety, and security of the weapon. If the firearm is lost, stolen, or otherwise missing, the Department shall be reimbursed by the employee the depreciated value of the firearm.
- (d) The number of weapons assigned to each facility will be in accordance with the Local Inventory Standards formula issued by the Director of Prisons.
- (e) Fiscal Policy 1C .1600 governs the purchase of firearms by retiring employees and surviving spouses or surviving children.

*History Note: Statutory Authority G.S. 148-5; 148-11;
Eff. October 1, 1990.*

.1806 LOST WEAPONS

As soon as it is discovered that a weapon may be missing, the following shall be accomplished:

- (1) A complete inventory of all weapons will be conducted.
- (2) Loss or theft of firearms will be reported through the normal chain-of-command on Incident Report, Form DC-432.

- (3) The PIN Communication Center in the Prison Headquarters (Randall Building) should be notified immediately by telephone giving specific data, i.e., serial number, make, caliber, type, date of theft or loss, model, length of barrel, finish, circumstances under which stolen or loss, etc.
- (4) If a firearm is recovered, the PIN Communication Center should be notified in the manner of Paragraphs (1), (2) and (3) of this Rule.
- (5) The PIN operator will send the reporting unit a copy of the PIN Stolen/Recovered Gun Report showing that lost or stolen weapon has been reported and likewise on all weapons recovered.
- (6) A copy of the Incident Report, Form DC-432, and PIN Stolen/Recovered Gun Report must be forwarded to the Equipment Control Office before any firearm can be removed due to losses or theft.

*History Note: Statutory Authority G.S. 148-5; 148-11;
Eff. October 1, 1990.*

.1807 SNIPER EQUIPMENT

Under no circumstances is any employee or armory officer to tamper with or shoot a sniper rifle without notifying the designated sniper and approval of the institution head or area administrator.

*History Note: Statutory Authority G.S. 148-5; 148-11;
Eff. October 1, 1990.*

.1808 PROFICIENCY

Weapons shall only be issued to persons who are proficient in the use of the weapon to be issued. Employees will be issued credentials to include the employee's name, weapons proficiency, and the date of proficiency expiration for each weapon.

*History Note: Statutory Authority G.S. 148-5; 148-11;
Eff. October 1, 1990.*

.1809 STORAGE OF WEAPONS

- (a) All weapons shall be stored in a safe and secure manner. Stored weapons shall not be loaded.
- (b) Cabinets containing arms, ammunition, or equipment should have an inventory list indicating the contents and specific location. Where security considerations allow, the inventory should be posted on the outside of the cabinet.
- (c) All dated materials, such as gases or ammunition, shall be stored so that the oldest is issued first.
- (d) All armories will contain battery powered emergency lighting, fire extinguishers, and a telephone.
- (e) All ammunition and other combustible materials must be stored in secure metal cabinets.
- (f) Facility Standard Operating Procedures shall prevent firearms from entering the prison facility confines. Provisions shall be made for the secure storage of visitors' firearms prior to entry into the facility.

*History Note: Statutory Authority G.S. 148-5; 148-11;
Eff. October 1, 1990.*

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

CHAPTER 45 - NORTH CAROLINA DRUG COMMISSION

SUBCHAPTER 45H - DRUG TREATMENT FACILITIES

SECTION .0200 - SCHEDULES OF CONTROLLED SUBSTANCES

.0202 SCHEDULE I

(d) Hallucinogenic Substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation (for purposes of this Paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(1) 3,4-methylenedioxy amphetamine	7400
(2) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA)	7404
(3) 5-methoxy-3,4-methylenedioxy-amphetamine	7401
(4) 3,4,5-trimethoxy amphetamine	7390
(5) Bufotenine Some trade and other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine.	7433
(6) Diethyltryptamine Some trade and other names: N,N-Diethyltryptamine; DET	7434
(7) Dimethyltryptamine Some trade and other names: DMT	7435
(8) 3,4-methylenedioxymethamphetamine (MDMA) its optical, positional and geometric isomers, salts, and salts of isomers	7405
(9) 4-methyl-2,5-dimethoxy-amphetamine Some trade or other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM" and "STP."	7395
(10) Ibogaine Some trade and other names: 7-Ethyl-6,6B,7,8,9,10,12,13-octahydro-2- methoxy-6,9-methano-5H-pyrido (1,2':1,2) azepino (5,4-b) indole; tabernanthe iboga.	7260
(11) Lysergic acid diethylamide Some trade or other names: LSD	7315
(12) Mescaline	7381
(13) N-ethyl-1-phenylcyclohexylamine	7455
(14) 1-(1-phenylcyclohexyl)pyrrolidine	7458
(15) Parahexyl Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro- 6,6,9-trimethyl-611-dibenzo[b,d]pyran; Synhexyl.	7374
(16) Peyote -- meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seed or extracts.	7415
(17) N-ethyl-3-piperidyl benzilate	7482
(18) N-hydroxy-3,4-methylenedioxyamphet- amine (also known as N-hydroxy-alpha- methyl-3,4-(methylenedioxy)phenethy- lamine, and N-hydroxy MDA)	7402
(19) N-methyl-3-piperidyl benzilate	7484
(20) N,N-dimethylamphetamine [Some other names: N,N,alpha-trimethylbenzeneethaneamine;	

N,N,alpha-trimethylphenethylamine], its salts, optical isomers, and salts of optical isomers	1480
(21) Psilocybin	7437
(22) Psilocyn	7438
(23) 2,5-dimethoxyamphetamine Some trade and other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA.	7396
(24) 4-bromo-2,5-dimethoxy-amphetamine Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA.	7391
(25) 4-methoxyamphetamine Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA.	7411
(26) Thiophene analog of phencyclidine Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienyl analog of phencyclidine; TCP, TCP.	7470
(27) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine Some other names: TCPy	7473

*History Note: Statutory Authority G.S. 90-88; 90-89; 143B-147;
Eff. June 30, 1978;
Amended Eff. October 1, 1990; August 1, 1990;
December 1, 1989; August 1, 1989.*

TITLE 17 - DEPARTMENT OF REVENUE

CHAPTER 7 - SALES AND USE TAX

SUBCHAPTER 7B - STATE SALES AND USE TAX

SECTION .0100 - GENERAL PROVISIONS

.0101 IMPOSITION OF/LIABILITY FOR COLLECTING/REMITTING TAX

(a) All retail sales of tangible personal property are subject to the three percent, two percent or the one percent sales or use tax unless specifically exempt by statute. Effective January 1, 1985, the gross receipts derived by a utility from sales of electricity, piped natural gas or intrastate telephone service are subject to the three percent state rate of sales tax, other than receipts from the sale of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by contract with that federal agency to make payments in lieu of taxes. The statute was amended effective January 1, 1989, to substitute the term "local telecommunications services" for the term "intra-state telephone service," as used in the above sentence, and to levy the three percent rate of tax only on receipts derived from local telecommunications services as defined by G.S. 105-120(e). A new subdivision, G.S. 105-164.4 (a) (4c) was added, effective January 1, 1989, which levies a six and one-half percent sales tax on the gross receipts derived from toll or private telecommunications services, as defined by G.S. 105-120(e), that both originate from and terminate in the state. The provisions of G.S. 105-164.4 (a) (c) do not apply to telephone membership corporations as described in Chapter 117 of the General Statutes. The gross receipts derived by a utility from sales of electricity, piped natural gas and telecommunications services are not subject to the local sales or use tax. Wholesale sales are not subject to the tax if made pursuant to the conditions set forth in the statutory definition of wholesale sale. Every person making retail sales of taxable tangible personal property or charges for taxable utility services is required to register with the department and collect and remit all tax due on such sales.

(b) A use tax at the applicable rate is levied on taxable tangible personal property purchased or received from within or without this state for storage, use or consumption in this state. The liability for the tax is not extinguished until it is fully paid, except that payment of the tax to a vendor who charges such tax shall relieve the purchaser of further liability with respect to the tax so paid. Where retail sales

or use tax is due and has already been paid in another state by the purchaser with respect to such tangible personal property, such tax may be credited against the North Carolina use tax due thereon. If the tax paid in another state is less than the North Carolina use tax due, the difference must be paid in this State. Effective July 1, 1981, no credit shall be allowed for sales or use taxes paid in another state if that taxing jurisdiction does not grant similar credit for sales taxes paid in North Carolina. Every person outside this state who is engaged in business in this state, as hereinafter defined, is required to register with the department and collect and remit the tax due on all taxable tangible personal property sold or delivered for storage, use or consumption in this state. Every person who purchases from out-of-state vendors any taxable tangible personal property for storage, use or consumption in this state upon which the tax has not been fully paid must register with the department and remit the tax due on such purchases. A fee is not required for registration by a consumer and a license is not issued in connection with such registration; however, all registrants will be furnished report forms to be used in reporting and remitting all tax due.

(c) In addition to administering the Sales and Use Tax Law, the Department is responsible for administering and collecting the highway use tax on the lease or rental of motor vehicles and the scrap tire disposal fee. Reference is made to 17 NCAC 7B .4619, 17 NCAC 7B .4601 and 17 NCAC 7B .1906, respectively, for further information on these levies.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.6;
105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1990; May 1, 1990;
August 1, 1986; February 1, 1986.*

.0104 REPORTS

(a) A person who engages exclusively in the business of making wholesale sales is not required to file monthly reports. However, if in addition to making wholesale sales, such person makes taxable sales to users or consumers or nonregistered merchants or makes purchases subject to the use tax, he is required to file semimonthly, monthly or quarterly reports as provided by statute.

(b) All utilities shall file a monthly return except that a utility allowed to pay tax under G.S. 105-120 on a quarterly basis shall file a quarterly return. A quarterly return is due by the last day of the month following the quarter covered by the return. A monthly return is due by the last day of the month following the month in which the tax accrues, except the return for tax that accrues in May is due by June 25th of each year.

A utility that is required to file a monthly return may file an estimated return for the first month, the second month or both the first and second months of the quarter. A utility is not subject to interest on or penalties for an underpayment submitted with an estimated monthly return if the utility timely pays at least 95 percent of the amount due with a monthly return and includes the underpayment with the company's return for the third month of the same quarter.

(c) Every person who purchases from out-of-state vendors taxable tangible personal property for storage, use or consumption in this state upon which the tax has not been fully paid must file reports on a semimonthly, monthly or quarterly basis as provided by statute and report all such purchases and remit the applicable tax due thereon.

*History Note: Statutory Authority G.S. 105-164.16;
105-164.17; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1990; April 1, 1986;
February 1, 1986; January 1, 1982.*

.0105 MEASURE OF TAX DUE

(a) The tax is due on the merchant's gross retail sales after deducting therefrom exempt sales and other nontaxable receipts. The merchant shall pay to the state the amount due, as provided by statute, at the applicable rates on his total taxable retail sales, irrespective of whether he has collected the tax thereon and shall also pay any amount of tax collected in excess of the amount which should have been collected on taxable sales. If tax is collected on exempt or nontaxable sales, the tax erroneously collected must be paid to the secretary and no refund thereof shall be made to a taxpayer unless the purchaser has received credit for or has been refunded the amount of tax erroneously collected.

(b) When the customer purchases more than one article at one trading period, the applicable rate of tax should be applied to the total charge rather than to the charge for each article. Those businesses having cash registers at each counter or in each department should collect a tax equal to the tax due on the total charge for tangible personal property purchased by a customer at one trading period without leaving the place of business. Whenever a person entertains guests and pays the total combined charge for meals or refreshments, the tax should be applied to the total combined charge for such property, even though separate checks or invoices are issued to each individual.

*History Note: Statutory Authority G.S. 105-164.11; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1990.*

.0124 ERRONEOUS INFORMATION

The state is not estopped to collect the retail sales or use tax levied by the statute by reason of an agent of the Department of Revenue erroneously advising the merchant that certain sales are not subject to the tax. Whenever the Secretary of Revenue shall construe any provisions of the revenue laws administered by him and shall issue or publish to taxpayers in writing any regulation or ruling so construing the effect or operation of any such laws, such ruling or regulation shall be a protection to the taxpayers affected thereby and taxpayers shall be entitled to rely upon such regulation or ruling.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. January 1, 1982;
Amended Eff. October 1, 1990.*

SECTION .0700 - SPECIFIC INDUSTRY PURCHASES

.0707 CONCRETE MANUFACTURERS

(a) Weigh hoppers sold to ready-mix concrete manufacturers and sales of scales to other manufacturers are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article when used for weighing cement or ingredient materials for the manufacturing process. Sales to manufacturers of scales for use in shipping and receiving areas are subject to the three percent rate of tax.

(b) Effective October 1, 1989, the sale of a truck with a ready-mix concrete mill mounted upon the chassis at the time of the sale which is operated off a power train from the truck transmission is exempt from sales tax and subject to the three percent highway use tax with a maximum tax of one thousand dollars (\$1,000.00) applicable thereto when sold to a ready-mix concrete manufacturer for use in mixing concrete for sale and transporting it to the purchaser. Prior to October 1, 1989, such a sale was subject to the two percent rate of tax with a maximum tax of three hundred dollars (\$300.00) when sold to a ready-mix concrete manufacturer for the above-described purposes.

(c) Sales of calcium chloride to concrete manufacturers for use as an ingredient or component part of concrete manufactured for sale are exempt from tax. Sales of calcium chloride to contractors for use or consumption in the performance of contracts are subject to the three percent rate of tax. Effective February 15, 1984, sales of calcium chloride solutions to farmers for use as an antifreeze in tractor tires are subject to the one percent rate of tax.

*History Note: Statutory Authority G.S. 105-164.4;
105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1990; July 1, 1984; January 1, 1982.*

SECTION .1900 - TIRE RECAPPERS AND RETREADERS: TIRE AND TUBE REPAIRS

.1906 SCRAP TIRE DISPOSAL FEE

(a) Effective January 1, 1990, a scrap tire disposal fee of one percent is levied on the sales price of each retail sale of a new motor vehicle tire. The fee is not due on tires sold for any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment, any vehicle designed primarily for use in work off the highway, or a manufactured home. "Sales price" includes the amount of any federal manufacturer's excise tax imposed on such tires. The one percent fee is imposed on tire retailers' net taxable sales of new motor vehicle tires and it is to be col-

lected and paid in the same manner as the State sales tax. However, the fee is not a part of the tax base on which the sales tax is to be computed. It does not apply to:

- (1) sales of recapped tires,
- (2) receipts from the lease or rental of tires,
- (3) sales of tires for resale,
- (4) the sale of used motor vehicle tires,
- (5) factory installed tires which after use are replaced with new tires and then sold at retail,
- (6) tires which are sold to motor vehicle dealers to be mounted on and sold as a part of a new or used motor vehicle, or
- (7) sales to the United States Government or any agency thereof.

(b) Motor vehicle tires purchased outside of North Carolina for use in this State will be subject to the one percent fee on the cost price of each new tire to be paid in the same manner as the State use tax under G.S. 105-164.6. Every person located outside this State engaged in business in this State is required to register with the Department and collect and remit the scrap tire disposal fee on all retail sales of new motor vehicle tires sold or delivered for storage, use or consumption in this State. The exemptions and exclusions under the Sales and Use Tax Law and the "storage and use exclusion," as well as the lower rates of tax imposed by the Sales and Use Tax Law, do not apply to this fee levy. The refund provisions of G.S. 105-164.14(a), (b) and (c) do not apply to this fee levy.

(c) The fee levy constitutes a separate collection program from sales tax for the Sales and Use Tax Division and is to be reported on the Waste Tire Disposal Fee Report, Form E-500 G, which is provided by the Department.

(d) Every person engaged in the business of selling new motor vehicle tires at retail or making purchases subject to the scrap tire use fee and whose total scrap tire fee liability is consistently less than twenty thousand dollars (\$20,000) per month must file on, or before the 15th day of each calendar month a report for the previous month and remit the taxes due with such report. When the total amount of the scrap tire disposal fee for which a taxpayer is liable is consistently less than twenty-five dollars (\$25.00) per month, such taxpayer may file a quarterly return with remittance of the tax on or before the 15th day of January, April, July and October of each year for the preceding three months' period upon making application to the Secretary to use such basis of reporting. A report must be filed for each reporting period. Reports for the periods in which no sales are made should be marked "no sales." A taxpayer who is consistently liable for at least twenty thousand dollars (\$20,000) per month in scrap tire disposal fees shall, as directed by the Secretary of Revenue, file a return on a semimonthly basis. These returns are due within ten days after the end of each semimonthly period. The semimonthly reporting periods are the first through the 15th day of each month and the 16th through the last day of each month. In determining the amount of tax due from a taxpayer for a reporting period, the Secretary shall consider the total amount due from all places of business owned or operated by the same person as the amount due for that period.

*History Note: Statutory Authority G. S. 105-262; 105-264; 130A-309.55;
130A-309.56;
Eff. October 1, 1990.*

SECTION .2100 - COAL; COKE; FUEL OIL; OXYGEN; ACETYLENE; HYDROGEN; LIQUEFIED PETROLEUM GAS AND OTHER COMBUSTIBLES

.2105 AVIATION FUEL

Sales of aviation gasoline and other aviation fuel to users or consumers in this state are subject to the three percent state and two percent local rates of tax. The federal tax on aviation gasoline or other aviation fuels which is levied at the rate of 9.1 cents per gallon by Chapter 32, Section 4081, of the Internal Revenue Code and the federal super fund tax of .35 cents per gallon are imposed on gasoline sold by any producer, terminal operator or importer of gasoline and should be included in the sales price of aviation gasoline on which North Carolina sales tax is due. The federal tax of three cents per gallon on noncommercial aviation gasoline and the federal tax of 14.1 cents per gallon on certain other liquids sold for use or used for fuel in noncommercial aviation as levied by the provisions of Chapter 31, Section 4041, of the Internal Revenue Code, are taxes imposed at the retail level and these taxes are not includable in the sales price upon which North Carolina sales tax is due.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;*

Amended Eff. October 1, 1990; January 3, 1984.

SECTION .2600 - LIABILITY OF CONTRACTORS: USE TAX ON EQUIPMENT BROUGHT INTO STATE: BUILDING MATERIALS

.2606 PRE-FABRICATED BUILDINGS: CONTRACTORS

Sales of pre-fabricated buildings to contractors, builders, or other users or consumers in this state are subject to the three percent state and two percent local sales or use tax. Manufacturers of pre-fabricated buildings entering into performance contracts for the erection of buildings are liable for payment of the three percent state and two percent local sales or use tax on the cost price of tangible personal property used in the performance of the contract.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1990.*

SECTION .3200 - TELEPHONE AND TELEGRAPH COMPANIES

.3201 IN GENERAL

(a) Sales of central office equipment and switchboard and private branch exchange equipment to telephone and telegraph companies regularly engaged in providing telephone and telegraph services to subscribers on a commercial basis and, effective July 1, 1983, sales to those companies of prewritten computer programs used in providing telephone service to their subscribers are subject to the one percent sales or use tax with a maximum tax of eighty dollars (\$80.00) per article. For the purpose of determining the items that may be properly included in the terms central office equipment, switchboard equipment and private branch exchange equipment, reference is made to Accounts 221, 231 and 234 of Title 47--Telecommunication Chapter 1, Part 31, Uniform Systems of Accounts, Class A and Class B Telephone Companies, of the Federal Communications Commission's rules and regulations as revised to January 1, 1960. This Rule has no application to future changes in the Federal Communications Commission's rules and regulations until such changes are reviewed by the Secretary of Revenue to determine the application of tax to the tangible personal property affected by such changes.

(b) Account 221; Central Office Equipment. This account includes switchboards and other equipment, instruments and apparatus necessary to the functions of central offices. Sales to and purchases by the above-referred to telephone and telegraph companies of the items included in Account 221, with certain exceptions, examples of which are set out below, are subject to the one percent sales or use tax with a maximum tax of eighty dollars (\$80.00) per article, irrespective of whether the items are classified in the Uniform System of Accounts as capital expenditures or as maintenance expense. Examples of items contained in Account 221 which are taxable at the three percent rate are:

- (1) aisle-lighting equipment attached to buildings;
- (2) minor building alterations when tangible personal property not properly termed central office equipment is affixed or attached to or in any manner becomes a part of a building or structure;
- (3) cable, other than that connecting central office units to each other or to distributing frames;
- (4) covers for transmission power apparatus;
- (5) desks and tables unless equipped with central office equipment when purchased;
- (6) foundations for engines and other equipment when part of building;
- (7) loading coils used outside central office, loud speaker equipment, operators' chairs;
- (8) platforms, rolling ladders, tarpaulins, ticket holders, toll ticket carriers;
- (9) water stills for battery service;
- (10) tools and portable testing equipment regardless of where used;
- (11) items not herein specified but which may be excluded by Notes A, B, C and D to Account 221.

(c) Account 231; Station Apparatus. This account includes private branch exchange equipment in addition to station apparatus. That equipment which is properly included in the term private branch exchange equipment is taxable at the one percent rate subject to the eighty dollar (\$80.00) maximum tax per article, whether classified by the Uniform System of Accounts as capital expenditures or as maintenance expense; however, all other equipment in this account is subject to the three percent sales or use tax. Examples of items contained in Account 231 which are taxable at the three percent rate are desk sets, hand sets, wall sets, mobile telephone equipment, backboards, battery boxes, booths, coil collectors, station wiring, protectors, arresters, ground rods, clamps, wire and similar associated equip-

ment, and any items not properly classified as private branch exchange equipment and not included in Accounts 221 and 234 but distributable to other accounts by Notes A, B, C and D to Account 231.

(d) Account 234; Large Private Branch Exchange. This account contains equipment and apparatus necessary to the operation of the above named exchanges. The equipment and apparatus contained in this account which are properly included in the term private branch exchange equipment are subject to the one percent sales or use tax with a maximum tax of eighty dollars (\$80.00) per article, whether classified under the Uniform System of Accounts as capital expenditures or as maintenance expense, but does not include any tangible personal property which is station apparatus. Examples of items included in Account 234 which are taxable at the three percent rate are operators' chairs and equipment and apparatus distributable to other accounts by Notes A, B, and C to Account 234.

(e) Effective January 1, 1985, the gross receipts derived by a utility from sales of intrastate telephone service are subject to the three percent sales tax. The statute was amended effective January 1, 1989, to substitute the term "local telecommunications services" for the term "intrastate telephone service," as used in the above sentence, and to levy the three percent rate of tax only on receipts derived from local telecommunications services as defined by G.S. 105-120(e). A new subdivision, G.S. 105-164.4(a) (4c) was added, effective January 1, 1989, which levies a six and one-half percent sales tax on the gross receipts derived from toll or private telecommunications services, as defined by G.S. 105-120(e), that both originate from and terminate in the state which are not subject to the privilege tax under G.S. 105-120. The provisions of G.S. 105-164.4(a) (4c) do not apply to telephone membership corporations as described in Chapter 117 of the General Statutes. The receipts upon which the tax is due is the total amount derived from the sale of telecommunications services, including any charges that go into the delivery of the services that are a part of the sale of services valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller without any deduction on account of the cost of the services sold, the cost of materials used, labor or service costs, interest charged, losses or any other expenses whatsoever. Therefore, all charges for tangible personal property and services provided in the delivery of telecommunications services to the purchaser are a part of the sale of services upon which the tax is due, notwithstanding that some charges may be billed separately to the customer from the time or flat rate charges. Set forth in this Paragraph are the departmental interpretations as to the application of sales tax to transactions by telecommunications companies.

- (1) Sales tax should be separately stated on the bill provided to each customer; however, the franchise tax is not to be separately stated on such bills.
- (2) A telecommunications company must report receipts from sales of telecommunications services on an accrual basis. The sale of the services is considered to occur when the company bills the customer for the sale and the applicable tax should be computed thereon. Such receipts must be reported on the Utilities Sales Tax Return, Form E-500E. Telecommunications companies with a monthly liability of three thousand dollars (\$3,000.00) or more are required to file monthly reports on or before the last day of the month following the month in which the tax accrues except the return for tax that accrues in May is due by June 25th of each year. A telecommunications company that is required to file a monthly return may file an estimated return for the first month, the second month, or both the first and second months of the quarter. There is no interest or penalty for an underpayment submitted with an estimated monthly return if the utility timely pays at least 95 percent of the amount due with a monthly return and includes the underpayment with the company's return for the third month of the same quarter. A telecommunications company with a monthly liability of less than three thousand dollars (\$3,000.00) that has been authorized by the Secretary of Revenue to file the Franchise Return, Form CD 311, on a quarterly basis will continue to file the Utilities Sales Tax Return, Form E-500E, on a quarterly basis by the last day of the month following the quarter covered by the return.
- (3) Charges for reconnecting services to customers after services have been terminated for nonpayment are a part of gross receipts from sales of telecommunications services and are subject to sales tax. Likewise, any charges for disconnecting services are subject to the sales tax.
- (4) Sales of telecommunications services directly to the United States Government or any agency thereof are not subject to sales tax. In order to be a sale to the United States Government, the Government or agency involved must make the purchase of the services and pay directly to the vendor the purchase price of the services. While sales directly to the United States Government or any agency thereof are exempt from sales tax, telephone companies should obtain a purchase requisition one time from each agency for their records.
- (5) Accounts of purchasers representing taxable sales on which the sales tax has been paid that are found to be worthless and actually charged off for income tax purposes may at corresponding

periods be deducted from gross sales provided, however, they must be added to gross sales if afterwards collected.

- (6) The local sales tax is not applicable to those receipts from telecommunications services subject to the state sales tax of three percent, but the local tax is applicable to receipts from sales and leases of tangible personal property subject to the three percent state rate of tax.
- (7) Late payment charges are not subject to sales tax.
- (8) Any return check charges on customers' checks returned by a bank because of insufficient funds are not subject to sales tax.
- (9) Telecommunications companies, other vendors or lessors that sell or lease telecommunications equipment are liable for collecting and remitting the three percent state and two percent local sales or use tax on the amounts of such sales or leases. Such tax is to be reported on the monthly, quarterly or semimonthly sales and use, tax reports, and should not be reported on the Franchise Return, Form CD-311, or the Utilities Sales Tax Return, Form E-500E.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1990; July 1, 1989;
May 1, 1985; March 1, 1984.*

.3203 TOLL OR PRIVATE TELECOMMUNICATIONS SERVICES

Effective January 1, 1989, the gross receipts derived from toll telecommunications services or private telecommunications services as defined by G.S. 105-120(e) that both originate and terminate in the state which are not subject to the privilege tax under G.S. 105-120 are subject to a six and one-half percent state sales tax. Such receipts are not subject to the state three percent or local sales taxes. This six and one-half percent sales tax is not refundable under the provisions of G.S. 105-164.14(b) or (c). This levy does not apply to telephone membership corporations as described in Chapter 117 of the General Statutes nor does it include those companies that provide pager services by means other than telephonic quality communications.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. July 1, 1989;
Amended Eff. October 1, 1990.*

SECTION .4600 - MOTOR VEHICLES AND BOATS

.4607 MOTOR VEHICLE KITS

.4608 MOTOR VEHICLES: MILITARY PERSONNEL

*History Note: Statutory Authority G.S. 105-164.4;
105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. January 3, 1984; July 5, 1980;
Repealed Eff. October 1, 1990.*

.4613 MOTOR VEHICLE LESSORS

Effective October 1, 1989, the sale, lease or rental of a motor vehicle is exempt from sales or use taxes and subject to the highway use tax as provided by 17 NCAC 7B .4619. Prior to October 1, 1989, when North Carolina lessors leased motor vehicles to out-of-state lessees to be located, domiciled or assigned in this state for use in interstate operations, including North Carolina, the lessors were required to collect and remit tax on the receipts derived therefrom notwithstanding that the lease may have been negotiated outside North Carolina. When North Carolina lessors leased motor vehicles to out-of-state lessees for use in intrastate operations in North Carolina, the lessors were required to collect and remit tax on the lease receipts notwithstanding that the leases were negotiated outside this state or that the vehicles were delivered to the lessees at a point outside this state or were registered outside this state. When North Carolina lessors leased motor vehicles to out-of-state lessees on a month-to-month basis for use exclusively in a state other than North Carolina, the initial lease payments were subject to this state's tax if the vehicles were delivered to the lessees at a point within this state. When North Carolina lessors leased motor vehicles to out-of-state lessees for a definite stipulated period of time for use exclusively in a state other than North Carolina, the lease payments were subject to this state's tax if the

vehicles were delivered to leasees at a point within this state. When the vehicles were delivered to the lessees at points outside this state, the lease receipts were not subject to this state's tax. When a motor vehicle was leased outside North Carolina for use in North Carolina, the lease receipts were subject to this state's tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1990; July 1, 1990.*

.4614 PICKUP CAMPERS: TRAILERS

Retail sales of camper trailers which are designed to run on the streets and highways and which are pulled by a self-propelled vehicle are properly classified as sales of motor vehicles and exempt from sales tax effective October 1, 1989. Retail sales of such camper trailers are subject to the highway use tax on and after October 1, 1989. Retail sales of slide-in pickup camper units are subject to the three percent state and two percent local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1990; July 1, 1990.*

.4619 HIGHWAY USE TAX

(a) Effective October 1, 1989, retail sales of motor vehicles are exempt from sales tax and subject to the three percent highway use tax under Article 5A of Chapter 105 of the General Statutes with a minimum tax of forty dollars (\$40.00) applicable thereto, with certain exceptions, and a maximum tax of one thousand dollars (\$1,000.00) on any one motor vehicle increasing to fifteen hundred dollars (\$1,500.00) July 1, 1993. The highway use tax must be paid to the Commissioner of Motor Vehicles by the dealer, the purchaser, or other applicant for a certificate of title at the time of making application. The basis for the tax on sales of motor vehicles by retailers will be the sales price of the motor vehicles including all accessories attached thereto at the time of delivery of the vehicles to the purchasers less the amount of any allowance given by the retailer for motor vehicles taken in trade.

The basis for the tax on sales of motor vehicles for which a certificate of title is issued because of a sale of the vehicle by the seller who is not a retailer is the market value of the vehicle, less the amount of any allowance given by the seller for a motor vehicle taken in trade for the purchased motor vehicle. The retail value of a motor vehicle for which a certificate of title is issued because of a reason other than the sale of the motor vehicle is the market value of the vehicle. The market value of the vehicle is presumed to be the value of the vehicle set forth in a schedule of values adopted by the Commissioner of Motor Vehicles not to exceed the wholesale values of motor vehicles as published in a recognized automotive reference manual.

(b) The statute provides that the highway use tax will not be applicable to motor vehicles delivered to purchasers on or after October 1, 1989, pursuant to written contracts of sale entered into before that date, but they will be subject to the sales tax at the rate of two percent with the three hundred dollars (\$300.00) maximum tax per vehicle. The highway use tax will not be applicable to the transfer of a motor vehicle to:

- (1) the insurer under G.S. 20-109.01 of the Motor Vehicle Laws because the vehicle is a salvage vehicle;
- (2) to either a manufacturer, as defined in G.S. 20-285, for resale; or
- (3) to a motor vehicle retailer for the purpose of resale. Only the minimum tax of forty dollars (\$40.00) will be imposed when a certificate of title is issued as a result of the transfer of a motor vehicle:
 - (A) by a gift between a husband and wife or a parent and child;
 - (B) by will or intestacy;
 - (C) by a distribution of marital property as a result of a divorce;
 - (D) to a secured party who has filed a security interest in the motor vehicle with the Department of the Secretary of State;
 - (E) to a partnership or corporation as an incident to the formation of the partnership or corporation and no gain or loss arises on the transfer under section 351 or section 721 of the Internal Revenue Code, or to a corporation by merger or consolidation in accordance with G.S. 55-110; or
 - (F) to the same owner to reflect a change in the owner's name.

When a purchaser of a motor vehicle returns the vehicle to the seller within 90 days after the purchase of the vehicle and receives a motor vehicle replacement or a refund of the purchase price paid to the seller, the purchaser may obtain a refund of the tax paid on the certificate of title issued for the returned vehicle less the minimum tax of forty dollars (\$40.00) by submitting an application for refund to the Commissioner of Motor Vehicles.

(c) G.S. 105-187.5 provides that, effective October 1, 1989, lessors of motor vehicles may elect to pay the highway use tax to the Commissioner of Motor Vehicles when applying for a certificate of title for a motor vehicle purchased by the retailer for lease or rental or may elect to collect and remit the tax to the Secretary of Revenue on the lease or rental receipts derived therefrom. The rate of highway use tax on motor vehicle lease or rental receipts will be eight percent for the first 90 continuous days of lease or rental of a vehicle to the same person, and the rate will reduce to three percent for the remainder of the continuous period during which the vehicle is leased or rented to that person. The maximum tax applicable to the sale of a motor vehicle applies when the vehicle is leased or rented to the same person for more than 90 continuous days and the tax paid by a person from the first day of such period applies toward the maximum tax. A retailer who elects to pay tax to the Secretary of Revenue on the gross receipts from the lease or rental of a motor vehicle must make this election when applying for a certificate of title for the vehicle. To make the election, the retailer must complete a form provided by the Division of Motor Vehicles. Once made, an election is irrevocable. The eight percent rate of tax will be deposited in the General Fund. The three percent rate of tax will be deposited to the Highway Trust Fund. Separate forms for reporting the separate rates of tax on motor vehicle lease receipts will be provided by the Department of Revenue to motor vehicle lessors upon receipt of their request for such forms.

*History Note: Statutory Authority G.S. 105-187.3; 105-187.4; 105-187.5;
105-187.6; 105-187.8; 105-187.9; 105-262;
Eff. October 1, 1990.*

SECTION .4700 - PRINTERS AND NEWSPAPER OR MAGAZINE PUBLISHERS

.4716 TYPESETTING

Charges made by typesetters for setting type for users, are charges for services rendered and receipts therefrom are exempt from tax. Typesetters are liable for remitting the three percent state and two percent local sales or use tax on purchases of metal or other tangible personal property for use in performing such services. Charges by typesetters to commercial printers for reproduction proofs used in the production of printed matter are not subject to the tax. Purchases of proof paper and ink by typesetters for use in the production of proofs for sale are subject to the tax.

*History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-164.6;
105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1990.*

SECTION .5400 - FORMS USED FOR SALES AND USE TAX PURPOSES

.5401 MONTHLY SALES AND USE TAX REPORT FORM: E-500

The Monthly Sales and Use Tax Report Form, E-500, is for use by registered taxpayers to report their sales and use tax liability on a monthly basis. A supply of forms is sent to monthly taxpayers when registration is effected and annually thereafter. The report is screened in green.

*History Note: Statutory Authority G.S. 105-164.15; 105-164.16; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1990; July 1, 1990.*

.5402 QUARTERLY SALES AND USE TAX REPORT FORM: E-500B

The Quarterly Sales and Use Tax Report Form, E-500B, is for use by registered taxpayers to report their sales and use tax liability on a quarterly basis. A form is sent to quarterly taxpayers when registration is effected and annually thereafter.

*History Note: Statutory Authority G.S. 105-164.15; 105-164.16; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1990.*

.5406 NOTICE OF PROPOSED TAX ASSESSMENT FORM: DOR 20

The Notice of Proposed Tax Assessment Form, DOR 20, is used by the sales and use tax division to notify taxpayers that an assessment of tax as indicated is proposed to be made against them. It is a three part form with one part going to the taxpayer and two parts remaining in the Division.

*History Note: Statutory Authority G.S. 105-164.15; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1990.*

.5407 PROPOSED ASSESSMENT OF WHOLESALE LICENSE FEE FORM: E-510B

*History Note: Statutory Authority G.S. 105-164.15; 105-262;
Eff. February 1, 1976;
Repealed Eff. October 1, 1990.*

.5409 NOTICE OF DELINQUENT TAX REPORT FORM: E-515

The Notice of Delinquent Tax Report Form, E-515, is used by the sales and use tax division to notify taxpayers that their sales and use tax report for the period indicated has not been received.

*History Note: Statutory Authority G.S. 105-164.15; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1990.*

.5410 SALES TAX EXTENSION FORM: E-517

The Sales Tax Extension Form, E-517, is completed by the sales and use tax division and sent to taxpayers to show that an extension of time for filing a monthly, semimonthly or quarterly sales and use tax report has been granted. The form, when applicable, is to accompany taxpayers' sales and use tax reports, Form E-500, E-500B, E-500C, E-500D, E-500E, E-500F or E-500G, referred to in 17 NCAC 7B .5401, 17 NCAC 7B .5402, 17 NCAC 7B .5444, 17 NCAC 7B .5447, 17 NCAC 7B .5448, 17 NCAC 7B .5449 and, 17 NCAC 7B .5458.

*History Note: Statutory Authority G.S. 105-164.15; 105-164.19; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1990.*

.5413 NOTICE OF PENALTY ASSESSMENT FORM: E-529

*History Note: Statutory Authority G.S. 105-164.15; 105-262;
Eff. February 1, 1976;
Repealed Eff. October 1, 1990.*

.5441 AFFIDAVIT FOR USE TAX FORM: E-589A (MECKLENBURG COUNTY)

*History Note: Statutory Authority G.S. 105-164.15; 105-262;
Eff. January 1, 1982;
Repealed Eff. October 1, 1990.*

.5444 SEMIMONTHLY SALES AND USE TAX REPORT FORM: E-500D

The Semimonthly Sales and Use Tax Report Form, E-500D, is for use by registered taxpayers to report their sales and use tax liability on a semimonthly basis. A taxpayer who is consistently liable for at least twenty thousand dollars (\$20,000) per month in state and local sales and use taxes shall, as directed by the Secretary of Revenue, file a return on a semimonthly basis. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period. The semimonthly reporting periods are the first day of each month through the fifteenth day

of each month and the sixteenth day of each month through the last day of each month. A supply of report forms is sent to semimonthly taxpayers when registration is effected and annually thereafter.

*History Note: Statutory Authority G.S. 105-164.4; 105-262;
Eff. February 1, 1986;
Amended Eff. October 1, 1990.*

.5449 MONTHLY SALES AND USE TAX REPORT FORM: E-500C

The Monthly Sales and Use Tax Report Form, E-500C, is for use by registered taxpayers to report their sales and use tax liability on a monthly basis. A supply of forms is sent to monthly taxpayers when registration is effected and annually thereafter. The report is screened in blue.

*History Note: Statutory Authority G.S. 105-164.15; 105-164.16; 105-262;
Eff. October 1, 1990.*

.5450 NOTICE FOR TAXPAYERS FILING THIRTEEN REPORTS A YEAR FORM: E-517A

The Notice for Taxpayers Filing Thirteen Reports a Year Form, E-517A, is completed by the sales and use tax division and sent to taxpayers to show that an extension of time for filing thirteen four-week sales and use tax reports per year has been granted. The form, when applicable, is to accompany taxpayers' sales and use tax reports, Form E-500 or E-500C, referred to in 17 NCAC 7B .5401 and 17 NCAC 7B .5449.

*History Note: Statutory Authority G.S. 105-164.15; 105-164.19; 105-262;
Eff. October 1, 1990.*

.5451 NOTICE FOR TAXPAYERS FILING TWENTY-SIX REPORTS A YEAR FORM: E-517B

The Notice for Taxpayers Filing Twenty-Six Reports a Year Form, E-517B, is completed by the Sales and Use Tax Division and sent to taxpayers to show that an extension of time for filing sales and use tax reports on a two week basis has been granted. The form, when applicable, is to accompany taxpayers' semimonthly sales and use tax reports, Form E-500D, referred to in 17 NCAC 7B .5444.

*History Note: Statutory Authority G.S. 105-164.15; 105-164.19; 105-262;
Eff. October 1, 1990.*

.5452 EXTENSION OF TIME FOR FILING SALES AND USE TAX REPORT FORM: E-517C

The Extension of Time for Filing Sales and Use Tax Report Form, E-517C, is completed by the Sales and Use Tax Division and sent to taxpayers to show that an extension of time of ten days for filing reconciling sales and use tax reports has been granted. The form, when applicable, is to accompany taxpayers' semimonthly sales and use tax reports, Form E-500D, referred to in 17 NCAC 7B .5444.

*History Note: Statutory Authority G.S. 105-164.15; 105-164.19; 105-262;
Eff. October 1, 1990.*

.5453 SPECIAL SALES AND USE TAX REMITTANCE FORM: E-503

The Special Sales and Use Tax Remittance Form, E-503, is for use by the Department to credit miscellaneous payments made by taxpayers.

*History Note: Statutory Authority G.S. 105-164.15; 105-262;
Eff. October 1, 1990.*

.5454 NOTICE OF TAX DUE FORM: DOR 31

The Notice of Tax Due Form, DOR 31, is used by the Sales and Use Tax Division to notify taxpayers that the assessment against them has become final and conclusive and that the account will be assigned to the Revenue Office in their district for collection. It is a two part form with one part being mailed to the taxpayer and the other part remaining in the Division.

*History Note: Statutory Authority G.S. 105-164.15; 105-262;
Eff. October 1, 1990.*

.5455 NOTICE OF TAX DUE FORM: DOR 31A

The Notice of Tax Due Form, DOR 31A, is used by the Sales and Use Tax Division to notify Revenue Officers that the assessment against a taxpayer has become final and conclusive and that the account is assigned to their district for collection. It is a three part form with all parts being sent to the Revenue Officer.

*History Note: Statutory Authority G.S. 105-164.15; 105-262;
Eff. October 1, 1990.*

.5456 NOTICE TO NEWLY REGISTERED WHOLESALE MERCHANTS FORM: E-552

The Notice to Newly Registered Wholesale Merchants Form, E-552, is mailed to taxpayers who have indicated on their application for registration that they will be engaged exclusively in the business of making wholesale sales. The notice defines wholesale sales and contains information in regard to wholesales sales along with an order form for Sales and Use Tax Regulations and the Sales and Use Tax Law.

*History Note: Statutory Authority G.S. 105-164.15; 105-262;
Eff. October 1, 1990.*

.5457 NOTICE TO ALL TAXPAYERS FORM: E-505AC

The Notice to All Taxpayers Form, E-505AC, is mailed to all newly registered taxpayers and contains information concerning the state and county rates of tax, report forms, the location of Revenue Offices in the state and various information of a general nature.

*History Note: Statutory Authority G.S. 105-164.15; 105-262;
Eff. October 1, 1990.*

.5458 UTILITIES SALES TAX RETURN FORM: E-500E

The Utilities Sales Tax Return, Form E-500E, is to be filed by utilities, including municipalities, remitting sales tax on electricity, piped gas and telecommunications services. Effective October 1, 1990, the return is to be filed either monthly or quarterly. The return is to be used to remit the tax collected on the above-stated utility services.

*History Note: Statutory Authority G.S. 105-164.4(a)(4a); 105-164.4(a)(4c);
105-262;
Eff. October 1, 1990.*

TITLE 19A - DEPARTMENT OF TRANSPORTATION

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2D - HIGHWAY OPERATIONS

SECTION .0600 - TECHNICAL SERVICES

.0603 ISSUING OFFICES AND PROCEDURES

(a) Application for permits may be made by phone, (except that no telephone applications will be accepted for movement of mobile homes having a width in excess of 12' but not greater than 14'), wire, letter or application Form No. PA-1 or PA-2, whichever is applicable for move requested. Essential information required is name and address of applicant, object being moved, date(s) of move, point of entry on and point of exit from State Highway System, desired route, make of towing vehicle, dimensions, gross weight and axle weight and spacing if over legal limits, and license tag number of truck, tractor and trailer. Application for building move permit must be made in person or by mail on application Form PA-2.

(b) All phone and wire requests will be issued by wire or facsimile and should be directed to N. C. Department of Transportation, Division of Highways, Permits Unit, P. O. Box 25201, Raleigh, N. C. 27611, hereinafter referred to as the central permit office.

(c) Written requests may be made to the central permit office or to the division or district office having jurisdiction. Division or district offices will not issue permits for travel outside their respective area without approval of other involved divisions or districts or the central permit office.

(d) All moves within a municipality must meet with the approval of the municipality. The issuance of a special permit by any division of highways' office does not relieve the permittee from complying with any local regulations.

(e) The issuing office will furnish the original to the permittee, retain one copy for its file, and division and district offices will forward one copy to Head of Maintenance Unit.

(f) Special permits will be carried in towing unit at all times permitted load is in transit.

(g) For movement of mobile/modular homes having a greater than 12' but not greater than a 14' unit with an allowable roof overhang not to exceed 12", application must be made at least two days prior to date of movement. On routes where studies have previously been made, the issuing office may waive the two day advance application.

History Note: Statutory Authority G.S. 20-119; 136-18(5);

Eff. July 1, 1978;

Amended Eff. October 1, 1990; April 1, 1984; April 11, 1980.

.0607 WIDTH LIMITED

(a) Width is limited to 14' for all movements except certain construction machinery, buildings, manufacturing machinery for short moves to or from projects or from nearest railhead to destination. If blades of bulldozers, graders or front end loader buckets cannot be angled to extend no more than 12' across the roadway, they must be removed. A blade or bucket or other attachment which has been removed for safety reasons, or if in the best interests to the Department has been removed, may be moved with the equipment without being considered a divisible load. Moves exceeding 12' for a commodity essential to national health, safety or defense may be permitted upon receipt of proof of necessity submitted by the agency directly concerned, however, if considered to be detrimental or unsafe to the other traveling public or if the highway cannot accommodate the move due to width or weight, such move will be denied. Loads must be so placed on vehicle so as to present least dimension to meeting or passing traffic.

(b) Permits for mobile/modular homes will be issued for a width not to exceed 14'-0" for the unit with an allowable roof overhang not to exceed 12". Moves in excess of 10' width are restricted on routes listed below. When the final destination is on a restricted route, consideration may be given to allow entrance on the restricted route at nearest practical point to final destination. The restricted routes are the following:

Highway No.	Restricted From	To	County(s) Involved
19	Upper Crossing of Solo Creek	Maggie	Jackson, Haywood
19A	Jct. 441	Ela	Jackson, Swain
19E	Ingalls	Cranberry	Avery
19W	Jct. 19	Tenn. Line	Yancey
23	U.S. 19	Tenn. Line	Madison
25-70	Jct. 19-23	Tenn. Line	Buncombe, Madison
28	Fontana Village	Tenn. Line	Graham, Swain
28	Lauada	West's Mill	Macon, Swain
28	Gneiss	Ga. Line	Macon
63	Canto	N.C. 209	Buncombe, Madison
64	Highlands	Rosman	Macon, Jackson, Transylvania
74	Lake Lure	Asheville	Rutherford

80	Jct. 19E	Jct. 226	Buncombe Mitchell, Yancey
80	U.S. 70	Blue Ridge Pkwy.	McDowell
88	Warrensville	Tenn. Line	Ashe, Watauga
90	Valmead	Globe	Caldwell
106	Ga. Line	Highlands	Macon
129	Robbinsville	Tenn. Line	Graham
151	Jct. B.R. Parkway	Jct. 19-23	Buncombe, Henderson
176	Tryon	Saluda	Polk
178	S.C. Line	Rosman	Transylvania
194	Jct. 19E	Vilas	Avery, Watauga
194	Jct. 421	Baldwin	Ashe, Watauga
194	Warrensville	Va. Line	Ashe
197	Jct. 19E	Jct. 226	Yancey Mitchell
197	End of Pavement (Barnardsville)	U.S. 19E Burnsville	Buncombe, Yancey
208	Jct. 25-70	Tenn. Line	Madison
209	Lake Junaluska	Jct. 25-70	Haywood, Madison
212	Jct. 208	Tenn. Line	Madison
221	Linville	Blowing Rock	Avery, Watauga
221	Jct. 88	Twin Oaks	Ashe, Alleghany
226	Bakersville	Tenn. Line	Mitchell
226A	N.C. 226	N.C. 226	McDowell
261	Bakersville	Tenn. Line	Mitchell
268	Elkin	Jct. 601	Surry
276	Jct. 280 and 64	Cruso	Haywood, Transylvania
441	Cherokee	Tenn. Line	Swain

(c) Extended period permits for times up to 12 months may be granted for 12' width mobile homes by the central permit office on a statewide basis on NC and US routes. Extended period permits for widths in excess of 10' are granted only for specified county road routes.

(d) Annual permits may be granted to manufacturers, retailers licensed by Division of Motor Vehicles, and to contract carriers licensed by the Public Utilities Commission for the movement of mobile and modular home units having a width in excess of 12' but not greater than a 14' unit with an allowable roof overhang not to exceed 12" by the Central Permit Office on designated NC and US routes. All others will be issued single trip permits good for ten days from date of issue over approved routing.

History Note: Authority G.S. 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978; Eff. July 1, 1978; Amended Eff. October 1, 1990; September 1, 1990; January 1, 1985; April 1, 1984.

.0622 ESCORT VEHICLE REQUIREMENTS

(a) A leading escort vehicle is required for loads exceeding 12' wide on all two lane highways, except that mobile homes and modular homes over 10' wide require escort vehicles in that area of the state north and west of I-85 from the South Carolina line to Greensboro and west of US 29 from Greensboro to the Virginia line. For mobile or modular homes in excess of 12' wide but not greater than a 14' unit

with an allowable roof overhang not to exceed 12", and for other loads 14' or more wide, both a leading and following escort vehicle is required, with flashing amber lights and wide load sign. Flashing amber lights are required to be displayed on the front and rear on the traffic side during movement of a mobile/modular 14' unit with a roof overhang not to exceed 12". No following escort will be required in urban areas, where speeds are restricted except for mobile or modular homes in excess of 12' wide but not greater than 14' wide. On four lane highways if only one escort vehicle accompanies the move, it should be a follow vehicle. Mobile and modular homes not to exceed a 14' unit with an allowable roof overhang not to exceed 12" do not require a leading escort vehicle on four lane divided highways, however, a following escort vehicle will be required.

(b) Escort vehicles will not be required for movements of mobile and modular homes authorized by annual permits on designated routes. When escorts are not required on annual permits, a flashing amber light shall be mounted on the towing unit and on the rear top of mobile or modular home unit. Also, for a 14' unit with an allowable roof overhang not to exceed 12" flashing amber lights shall be displayed on the traffic side on the front and rear during movement.

(c) Driver(s) of escort vehicle(s) shall be in radio contact with the driver of the towing unit when escorting mobile or modular homes in excess of 12' wide but not greater than a 14' unit with an allowable roof overhang not to exceed 12".

*History Note: Statutory Authority G.S. 20-119; 136-18(5);
Eff. July 1, 1978;
Amended Eff. October 1, 1990; January 1, 1985;
January 1, 1979.*

.0624 TIME OF MOVE

Specially permitted moves may be made between sunrise and sunset Monday through Saturday. No moves may be made on Sunday or approved State holidays, unless otherwise stated on the permit. If the holiday falls on Saturday or Sunday, the following Monday will be considered a holiday. Time limits may be included in any permit when the issuing authority deems it desirable for safety or to expedite traffic. Modular or mobile homes greater than 12' but not greater than a 14' unit with an allowable roof overhang not to exceed 12", are permitted to move during these allotted times:

- (1) August 19-June 11
 - Fully Controlled Access Highways -
 - Sunrise to Sunset (Monday-Friday)
 - Sunrise to 12:00 Noon (Saturday)
 - Non-Controlled Access Rural Highways -
 - 8:30 a.m.-2:30 p.m. and 4:30 p.m. to
 - Sunset (Monday-Friday), Sunrise to 12:00 Noon (Sat.)
 - Non-Controlled Access Urban (Pop. greater than 10,000)
 - Four-Lane Highways - 8:30 a.m.-2:30 p.m. and
 - 6:00 p.m. to Sunset (Monday-Friday)
 - Sunrise to 12:00 Noon (Saturday)
 - Non-Controlled Access Urban (Pop. greater than 10,000)
 - Two-Lane Highways - 8:30 a.m.-2:30 p.m. (Monday-Friday)
 - Sunrise to 12:00 Noon (Saturday)
- (2) June 12-August 18
 - Rural Highways -
 - Sunrise to Sunset (Monday-Friday)
 - Sunrise to 12:00 Noon (Saturday)
 - Urban Highways (Population greater than 10,000) -
 - 8:30 a.m. to 4:30 p.m. and 6:00 p.m. to
 - Sunset (Monday-Friday)
 - Sunrise to 12:00 Noon (Saturday)

*History Note: Authority G.S. 20-119; 136-18(5); Board of
Transportation Minutes for February 16, 1977
and November 10, 1978;
Eff. July 1, 1978;
Amended Eff. October 1, 1990; September 1, 1990;
January 1, 1985; July 1, 1981.*

.0629 TOWING UNIT

The towing unit for mobile homes shall be rated at not less than one and one half tons with dual rear wheels for units up to 12' wide. For units more than 12' wide but not greater than a 14' unit with an allowable roof overhang not to exceed 12", the towing unit shall be rated not less than two tons and have a four speed transmission and be a minimum length of 15'. Headlights shall be burning during move. The mobile home shall be equipped with adequate brakes controlled from the towing unit. An individual may be permitted to move a mobile home owned by him for personal occupancy with a suitable towing vehicle other than specified with approval of the central permit office.

History Note: Statutory Authority G.S. 20-119; 136-18(5);

Eff. July 1, 1978;

Amended Eff. October 1, 1990.

.0632 WEATHER

No move will be made when atmospheric conditions render visibility less than 500' for a person or vehicle. Moves will not be made when highway is covered with snow or ice, or at any time travel conditions are considered unsafe by the division of highways or Highway Patrol or other law enforcement officers having jurisdiction. Movement of a mobile/modular 14' unit with an allowable roof overhand not to exceed 12", will be prohibited when wind velocities exceed 25 miles per hour in gusts.

History Note: Statutory Authority G.S. 20-119; 136-18(5);

Eff. July 1, 1978;

Amended Eff. October 1, 1990.

The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 1-13B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 1-13B-30.2(d).

ECONOMIC AND COMMUNITY DEVELOPMENT

Banking Commission

- | | |
|------------------------------------------------------------------------------|-------------------------------|
| <i>4 NCAC 3C .0201 - Establishment of Branch and Limited Svcs Facilities</i> | <i>ARRC Objection 7/19/90</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 8/16/90</i> |
| <i>4 NCAC 3C .0202 - Branch Closing</i> | <i>ARRC Objection 7/19/90</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 8/16/90</i> |
| <i>4 NCAC 3C .0901 - Books and Record</i> | <i>ARRC Objection 7/19/90</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 8/16/90</i> |
| <i>4 NCAC 3C .1301 - Annual Vacation</i> | <i>ARRC Objection 7/19/90</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 8/16/90</i> |

Community Assistance

- | | |
|--------------------------------------|-------------------------------|
| <i>4 NCAC 19L .0501 - Definition</i> | <i>ARRC Objection 7/19/90</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 8/16/90</i> |

Credit Union Division

- | | |
|-----------------------------------------------|-------------------------------|
| <i>4 NCAC 6C .0203 - Fields of Membership</i> | <i>ARRC Objection 8/16/90</i> |
|-----------------------------------------------|-------------------------------|

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Health

- | | |
|-----------------------------------------------------------------------------|-------------------------------|
| <i>15A NCAC 18A .1814 - Disposal of Garbage and Trash: Premises</i> | <i>ARRC Objection 6/21/90</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 7/19/90</i> |
| <i>15A NCAC 18A .2117 - Water Sanitation and Quality</i> | <i>ARRC Objection 8/16/90</i> |
| <i>15A NCAC 18A .2609 - Refrigeration: Thawing; and Preparation of Food</i> | <i>ARRC Objection 8/16/90</i> |
| <i>15A NCAC 18C .1529 - Point-of-Entry and Other Treatment Devices</i> | <i>ARRC Objection 6/21/90</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 7/19/90</i> |

Environmental Management

- | | |
|-------------------------------------------|-------------------------------|
| <i>15A NCAC 21H .1203 - Public Notice</i> | <i>ARRC Objection 8/16/90</i> |
|-------------------------------------------|-------------------------------|

Health: Epidemiology

- | | |
|----------------------------------------------------------------------------|-------------------------------|
| <i>15A NCAC 19B .0202 - Granting Permits</i> | <i>ARRC Objection 6/21/90</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 7/19/90</i> |
| <i>15A NCAC 19D .0407 - Medical Eligibility</i> | <i>ARRC Objection 6/21/90</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 7/19/90</i> |
| <i>15A NCAC 19D .0408 - Medical Eligibility/Licensed Nursing Home Svcs</i> | <i>ARRC Objection 6/21/90</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 7/19/90</i> |

Laboratory Services

- | | |
|-----------------------------------------|-------------------------------|
| <i>15A NCAC 20A .0002 - Definitions</i> | <i>ARRC Objection 6/21/90</i> |
|-----------------------------------------|-------------------------------|

*Agency Revised Rule**Obj. Removed 7/19/90***Marine Fisheries***15A NCAC 3A .0001 - Scope and Purpose**ARRC Objection 8/16/90**15A NCAC 3O .0203 - Shellfish Lease Application Processing**ARRC Objection 8/16/90***Solid Waste Management***15A NCAC 13B .1003 - Eligible Purposes**ARRC Objection 8/16/90**15A NCAC 13B .1005 - Priority Factors**ARRC Objection 8/16/90**15A NCAC 13B .1104 - General Conditions**ARRC Objection 8/16/90**15A NCAC 13B .1105 - Permit Required**ARRC Objection 8/16/90**15A NCAC 13B .1107 - Scrap Tire Collection Site Operational Reqmnts**ARRC Objection 8/16/90***Wildlife Resources Commission***15A NCAC 10C .0501 - Scope and Purpose**ARRC Objection 6/21/90**Agency Revised Rule**Obj. Removed 7/19/90***HUMAN RESOURCES****AFDC***10 NCAC 49C .0101 - Eligibility for Coverage**ARRC Objection 7/19/90**Agency Revised Rule**Obj. Removed 8/16/90***Governor Morehead School***10 NCAC 21A .0301 - Eligibility**ARRC Objection 7/19/90**Agency Revised Rule**Obj. Removed 8/16/90***Medical Assistance***10 NCAC 50B .0311 - Reserve**ARRC Objection 6/21/90**Agency Revised Rule**Obj. Removed 7/19/90***Youth Services***10 NCAC 44B .0504 - Medical Care**ARRC Objection 7/19/90**Agency Revised Rule**Obj. Removed 8/16/90**10 NCAC 44B .0506 - Room Restriction or Confinement**ARRC Objection 7/19/90**Agency Revised Rule**Obj. Removed 8/16/90***INSURANCE****Agent Services Division***11 NCAC 6A .0702 - Prelicensing Education Schools**ARRC Objection 8/16/90***Financial Evaluation Division***11 NCAC 11B .0607 - Application - Employers**ARRC Objection 8/16/90**11 NCAC 11B .0610 - Application - Groups**ARRC Objection 8/16/90***LICENSING BOARDS AND COMMISSIONS****Board Of Pharmacy**

21 NCAC 46 .1503 - Experience in Pharmacy

ARRC Objection 8/16/90

PUBLIC EDUCATION

Elementary and Secondary Education

16 NCAC 6C .0312 - Certificate Suspension and Revocation

ARRC Objection 8/16/90

16 NCAC 6D .0105 - Use of School Day

ARRC Objection 6/21/90

Objection Reconsidered and Failed

7/19/90

Clincher Motion Passed

SECRETARY OF STATE

Corporations Division

18 NCAC 4 .0101 - Location and Hours

ARRC Objection 6/21/90

18 NCAC 4 .0102 - Administration and Functions

ARRC Objection 6/21/90

18 NCAC 4 .0205 - Overpayment

ARRC Objection 6/21/90

18 NCAC 4 .0206 - Documents Not Specifically Provided For

ARRC Objection 6/21/90

18 NCAC 4 .0302 - Execution

ARRC Objection 6/21/90

18 NCAC 4 .0303 - Rejection

ARRC Objection 6/21/90

18 NCAC 4 .0305 - Corrective Filings-Nonprofit Corp/Limited Partnerships

ARRC Objection 6/21/90

18 NCAC 4 .0306 - Articles of Incorporation - Nonprofit Corporations

ARRC Objection 6/21/90

18 NCAC 4 .0307 - Application For Reservation of Corporate Name

ARRC Objection 6/21/90

18 NCAC 4 .0308 - Registered Office and Registered Agent

ARRC Objection 6/21/90

18 NCAC 4 .0311 - Art of Merger/Share Exch |G.S. 55-11-07/55A-42.1

ARRC Objection 6/21/90

18 NCAC 4 .0312 - Appl For Cert of Authority/Foreign Prof Corporation

ARRC Objection 6/21/90

18 NCAC 4 .0313 - Filing Merger Involving Foreign Corporation

ARRC Objection 6/21/90

18 NCAC 4 .0314 - Filing Evidence of Dissolution/Foreign Nonprofit Corp

ARRC Objection 6/21/90

18 NCAC 4 .0316 - Form for Annual Report

ARRC Objection 6/21/90

18 NCAC 4 .0401 - Documents

ARRC Objection 6/21/90

18 NCAC 4 .0402 - Cert of Facts/Certificate of Exit/Authorization

ARRC Objection 6/21/90

18 NCAC 4 .0501 - General

ARRC Objection 6/21/90

18 NCAC 4 .0502 - Words Prohibited in Addition to Statutory Prohibitions

ARRC Objection 6/21/90

18 NCAC 4 .0503 - Deceptively Similar and Distinguishable Names

ARRC Objection 6/21/90

18 NCAC 4 .0504 - Filing Fictitious/Assumed Name/Foreign Corporation

ARRC Objection 6/21/90

No Response Received From Agency

7/19/90

Response Received From Agency

Obj. Removed 8/16/90

Securities Division

18 NCAC 6 .1210 - Securities Exchgs/Auto Quotation Sys Approve/Admin

ARRC Objection 6/21/90

No Response Received From Agency

7/19/90

Response Received From Agency

Obj. Removed 8/16/90

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

10 NCAC 3R .0317(g) - WITHDRAWAL OF A CERTIFICATE

Robert Roosevelt Reilly, Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Dawn Health Care, a North Carolina General Partnership, Petitioner v. Department of Human Resources, Certificate of Need Section, Respondent* (90 DHHR 0296).

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Architecture	2
2	Agriculture	Auctioneers	4
3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Electrical Contractors	18
10	Human Resources	Foresters	20
11	Insurance	Geologists	21
12	Justice	Hearing Aid Dealers and Fitters	22
13	Labor	Landscape Architects	26
14A	Crime Control and Public Safety	Landscape Contractors	28
15A	Environment, Health, and Natural Resources	Marital & Family Therapy	31
16	Public Education	Medical Examiners	32
17	Revenue	Midwifery Joint Committee	33
18	Secretary of State	Mortuary Science	34
19A	Transportation	Nursing	36
20	Treasurer	Nursing Home Administrators	37
*21	Occupational Licensing Boards	Occupational Therapists	38
22	Administrative Procedures	Opticians	40
23	Community Colleges	Optometry	42
24	Independent Agencies	Osteopathic Examination and Registration	44
25	State Personnel	Pharmacy	46
26	Administrative Hearings	Physical Therapy Examiners	48
		Plumbing and Heating Contractors	50
		Podiatry Examiners	52
		Practicing Counselors	53
		Practicing Psychologists	54
		Professional Engineers and Land Surveyors	56
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work	63
		Speech and Language Pathologists and Audiologists	64
		Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

CUMULATIVE INDEX
(April 1990 - March 1991)

1990 - 1991

Pages	Issue
1 - 151.....	1 - April
152 - 235.....	2 - April
236 - 285.....	3 - May
286 - 312.....	4 - May
313 - 407.....	5 - June
408 - 473.....	6 - June
474 - 513.....	7 - July
514 - 603.....	8 - July
604 - 635.....	9 - August
636 - 723.....	10 - August
724 - 791.....	11 - September
792 - 859.....	12 - September
860 - 895.....	13 - October

AO - Administrative Order
AG - Attorney General's Opinions
C - Correction
FR - Final Rule
GS - General Statute
JO - Judicial Orders or Decision
M - Miscellaneous
NP - Notice of Petitions
PR - Proposed Rule
SO - Statements of Organization
TR - Temporary Rule

ADMINISTRATION

Auxiliary Services, 860 PR
State Property and Construction, 411 PR

ADMINISTRATIVE HEARINGS

Rules Division, 792 PR

AGRICULTURE

Markets, 737 PR
Plant Conservation Board, 1 PR
Plant Industry, 739 PR
State Fair, 737 PR
Structural Pest Control Committee, 7 PR

CORRECTION

Division of Prisons, 762 FR, 867 FR

CRIME CONTROL AND PUBLIC SAFETY

State Highway Patrol, 53 PR, 804 PR
Butner Public Safety Division, 419 PR

ECONOMIC AND COMMUNITY DEVELOPMENT

Banking Commission, 16 PR
Community Assistance, 25 PR, 317 PR
Credit Union, 317 PR, 860 PR
Hazardous Waste Management, 742 PR
Milk Commission, 24 PR, 741 PR

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management, 136 PR, 292 PR, 707 PR
Environmental Management, 54 PR, 193 PR, 420 PR, 542 PR, 706 PR, 744 PR
Health Services, 190 PR, 565 PR, 816 PR, 860 PR
Land Resources, 744 PR
Marine Fisheries, 63 PR, 484 PR, 805 PR
Wastewater Treatment Plant Operators Certification Commission, 551 PR
Water Treatment Facility Operators Board of Certification, 621 PR
Wildlife Resources and Water Safety, 137 PR, 206 PR, 293 PR, 349 PR, 438 PR, 563 PR, 748 PR, 815 PR

FINAL DECISION LETTERS

Voting Rights Act, 241, 286, 316, 605, 638, 792

FINAL RULES

List of Rules Codified, 143 FR, 226 FR, 302 FR, 463 FR, 587 FR, 710 FR, 842 FR

GOVERNOR/LT. GOVERNOR

Executive Orders, 236, 313, 408, 474, 514, 604, 636, 724

HUMAN RESOURCES

Aging, Division of, 704 PR
Drug Commission, 870 FR
Facility Services, 516 PR, 702 PR
Health Services, 152 PR, 245 PR
Medical Assistance, 191 PR
Mental Health, Developmental Disabilities and Substance Abuse Services, 29 PR, 318 PR, 475 PR,
Services for the Blind, 412 PR
Social Services, 247 PR, 607 PR
Water Treatment Facility Operators Board of Certification, 27 PR
Youth Services, 261 PR

INSURANCE

Actuarial Services Division, 480 PR
Agent Services Division, 321 PR, 520 PR
Engineering and Building Codes, 793 PR
Financial Evaluation Division, 342 PR, 525 PR
Fire and Casualty Division, 335 PR, 478 PR, 796 PR
Life: Accident and Health, 264 PR, 287 PR, 529 PR, 798 PR

JUSTICE

Attorney General, Office of the, 192 PR, 273 PR
Criminal Justice Education and Training Standards Commission, 704 PR
Sheriffs' Standards Division, 608 PR

LICENSING BOARDS

Cosmetic Art Examiners, Board of, 355 PR, 708 PR
Electrical Contractors, Board of Examiners of, 356 PR
Medical Examiners, Board of, 207 PR, 838 PR, 862 PR

Mortuary Science, Board of, 749 PR
Nursing, Board of, 300 PR, 496 PR
Nursing Home Administrators, Board of, 750 PR
Physical Therapy Examiners, Board of, 443 PR
Plumbing and Heating Contractors, Examiners, 621 PR
Practicing Psychologists, Board of, 755 PR
Real Estate Commission, 625 PR, 863 PR

PUBLIC EDUCATION

Elementary and Secondary, 141 PR, 275 PR, 351 PR

REVENUE

Individual Income Tax, 359 FR
License and Excise Tax Division, 445 FR
Sales and Use Tax, 213 FR, 453 FR, 872 FR

SECRETARY OF STATE

Corporations Division, 489 PR
Securities Division, 293 PR, 495 PR

STATE PERSONNEL

State Personnel Commission, 277 PR, 500 PR, 756 PR

STATE TREASURER

Department Rules, 352 PR
Local Government Commission, 352 PR, 442 PR
Solid Waste Management Capital Projects Financing Agency, 354 PR

STATEMENTS OF ORGANIZATION

Statements of Organization, 639 SO

TRANSPORTATION

Highways, Division of, 765 FR, 883 FR
Motor Vehicles, Division of, 222 FR, 773 FR

NORTH CAROLINA ADMINISTRATIVE CODE

The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available at one-half the new subscription price.

PRICE LIST FOR THE SUBSCRIPTION YEAR

Volume	Title	Chapter	Subject	New Subscription*	Quantity	Total Price
1 - 52	Full Code		All titles	\$750.00	_____	_____
1	1	1 - 37	Administration	90.00	_____	_____
2	2	1 - 24	Agriculture	75.00	_____	_____
3	2	25 - 52	Agriculture	75.00	_____	_____
4	3	1 - 4	Auditor	10.00	_____	_____
5	4	1 - 2	ECD (includes ABC)	45.00	_____	_____
6	4	3 - 20	ECD	90.00	_____	_____
7	5	1 - 2	Correction	60.00	_____	_____
8	5	3 - 4	Correction	30.00	_____	_____
9	6	1 - 4	Council of State		_____	_____
	7	1 - 12	Cultural Resources	60.00	_____	_____
10	8	1 - 9	Elections	10.00	_____	_____
11	9	1 - 4	Governor	45.00	_____	_____
12	10	1 - 2	Human Resources	30.00	_____	_____
13	10	3A - 3K	Human Resources	90.00	_____	_____
14	10	3L - 3R	Human Resources		_____	_____
			(includes CON)	45.00	_____	_____
15	10	3S - 3U	Human Resources	30.00	_____	_____
16	10	4 - 6	Human Resources	30.00	_____	_____
17	10	7	Human Resources	30.00	_____	_____
18	10	8 - 9	Human Resources	30.00	_____	_____
19	10	10	Human Resources	30.00	_____	_____
20	10	11 - 14	Human Resources	60.00	_____	_____
21	10	15 - 17	Human Resources	45.00	_____	_____
22	10	18	Human Resources	75.00	_____	_____
23	10	19 - 30	Human Resources	90.00	_____	_____
24	10	31 - 33	Human Resources	30.00	_____	_____
25	10	34 - 41	Human Resources	60.00	_____	_____
26	10	42	Human Resources	45.00	_____	_____
27	10	43 - 51	Human Resources	90.00	_____	_____
28	11	1 - 15	Insurance	90.00	_____	_____
29	12	1 - 12	Justice	90.00	_____	_____
30	13	1 - 6	Labor	30.00	_____	_____
31	13	7	OSHA	45.00	_____	_____
32	13	8 - 15	Labor	45.00	_____	_____
33	14A	1 - 11	Crime Control and		_____	_____
			Public Safety	45.00	_____	_____
34	15A	1 - 2	EHNR (includes EMC)	90.00	_____	_____
35	15A	3 - 6	EHNR	45.00	_____	_____
36	15A	7	Coastal Management	45.00	_____	_____
37	15A	8 - 9	EHNR	30.00	_____	_____
38	15A	10	Wildlife	45.00	_____	_____

Continued

Volume	Title	Chapter	Subject	New Subscription*	Quantity	Total Price
39	15A	11 - 18	FHNR	90.00	_____	_____
40	15A	19 - 26	EHNR		_____	_____
			(includes Breathalyzer)	75.00	_____	_____
41	16	1 - 6	Education	30.00	_____	_____
42	17	1 - 6	Revenue	75.00	_____	_____
43	17	7 - 11	Revenue	60.00	_____	_____
44	18	1 - 7	Secretary of State	30.00	_____	_____
45	19A	1 - 6	Transportation	90.00	_____	_____
46	20	1 - 9	Treasurer	45.00	_____	_____
47	21	1 - 16	Licensing Boards	75.00	_____	_____
48	21	17 - 37	Licensing Boards	75.00	_____	_____
49	21	38 - 70	Licensing Boards		_____	_____
	22	1 - 2	Administrative Procedures	75.00	_____	_____
50	23	1 - 2	Community Colleges	10.00	_____	_____
51	24	1 - 2	Independent Agencies	10.00	_____	_____
52	25	1	State Personnel	60.00	_____	_____
53	26	1 - 4	Administrative Hearings	10.00	_____	_____
				Total	_____	_____

(Make checks payable to Office of Administrative Hearings.)

* This price includes the title in its current form plus supplementation for the subscription year.

Subscription years are January 1 through December 31.

MAIL TO:

OFFICE OF ADMINISTRATIVE HEARINGS
POST OFFICE DRAWER 11666
RALEIGH, NORTH CAROLINA 27604

Office of Administrative Hearings
P. O. Drawer 11666
Raleigh, North Carolina 27604

PLACE
STAMP
HERE

FOLD HERE

NORTH CAROLINA REGISTER ORDER FORM

- ☐ Please enter my subscription for the *North Carolina Register* to start with the _____ issue.
(\$105.00)/year subscription)
- ☐ Renew *North Carolina Register*
- ☐ Check Enclosed ☐ Please bill me

Please make checks payable to Office of Administrative Hearings

NAME _____ ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____

Return to Office of Administrative Hearings - fold at line, staple at bottom and affix postage.)

CHANGE OF ADDRESS:

1. Present Address

NAME

ADDRESS

CITY

STATE

ZIP

2. New Address

NAME

ADDRESS

CITY

STATE

ZIP

Office of Administrative Hearings
P. O. Drawer 11666
Raleigh, North Carolina 27604

"SAFETY IN
THE LAWS"



FIRST CLASS MAIL

585
UNIV. OF NORTH CAROLINA
LAW LIBRARY
VAN HECKE-WETTACH 064-A
CHAPEL HILL

NC 27514